

Item SP06-05 Response Form

Title: **Title 3. Civil Rules** (adopt rules 3.1–3.2, 3.50–3.63, 3.100, 3.1200–3.1207, 3.1560, 3.720–3.730, 3.736–3.741, 3.750, 3.900–3.911, 3.920–3.926 of the California Rules of Court; amend and renumber rules 981.1, 201.7–201.9, 202, 201.5, 202.5, 202.7, 804, 367, 1800, 1810–1812, 1500–1506, 1510–1515, 1520–1532, 1540–1545, 1550, 224, 298, 204–210, 213, 214, 1850–1861, 1580, 1600–1618, 1620, 1620.1–1620.9, 1622, 1630–1635, 1637, 1638, 331, 333, 335, 337, 341, 301, 303, 309, 311–316, 381, 347, 359. 361. 363, 364, 1639, 1830, 1900–1902, 1902.5, 1903–1908, 317, 319, 321, 323, 324, 324.5, 391, 325, 329, 327, 326, 371, 375, 375.1, 372, 373, 342, 343, 345, 369, 376, 222, 330, 378, 225, 383, 228, 230, 232, 232.5, 236.5, 236, 870, 870.2, 388, 875, 389, 234, 986, 870.4, 1701–1706, 1725 as rules 3.20, 3.110, 3.220–3.222, 3.250, 3.252, 3.254, 3.300, 3.350, 3.400–3.403, 3.500–3.506, 3.510–3.515, 3.520–3.532, 3.540–3.545, 3.550, 3.650, 3.670, 3.700, 3.710–3.715, 3.734, 3.735, 3.744, 3.745, 3.760–3.771, 3.800, 3.810–3.830, 3.850–3.860, 3.870–3.877. 3.900–3.911, 3.1000, 3.1010, 3.1020, 3.1025, 3.1030, 3.1100, 3.1103, 3.1009, 3.1110, 3.1112–3.1116, 3.1130, 3.1140, 1.1150–3.1153, 3.751, 3.878, 3.1175–3.1184, 3.1300, 3.1302, 3.1304, 3.1306, 3.1308, 3.1310, 3.1312, 3.1320, 3.1322, 3.1324, 3.1326, 3.1330, 3.1332, 3.1335, 3.1340, 3.1342, 3.1350, 3.1352, 3.1354, 3.1360, 3.1362, 3.1380, 3.1382, 3.1384, 3.1385, 3.1390, 3.1540, 3.1560, 3.1580, 3.1590, 3.1591, 3.1600, 3.1602, 3.1700, 3.1702, 3.1800, 3.1802, 3.1804, 3.1806, 3.1900, 3.2000, 3.2100, 3.2102, 3.2104, 3.2106, 3.2108, 3.2110, and 3.2120; and repeal rules 985, 212, 244.1, 244.2, 991, 307, 379, 820, and 1636)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- ☐ **Commenting on behalf of an organization**

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee
All comments will become part of the public record of the council's action.*

Address: _____

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Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, March 3, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

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or the Rules and Projects Committee
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Invitation to Comment (SP06-05)

Title	<p>Title 3. Civil Rules (adopt rules 3.1–3.2, 3.50–3.63, 3.100, 3.1200–3.1207, 3.1560, 3.720–3.730, 3.736–3.741, 3.750, 3.900–3.911, 3.920–3.926 of the California Rules of Court; amend and renumber rules 981.1, 201.7–201.9, 202, 201.5, 202.5, 202.7, 804, 367, 1800, 1810–1812, 1500–1506, 1510–1515, 1520–1532, 1540–1545, 1550, 224, 298, 204–210, 213, 214, 1850–1861, 1580, 1600–1618, 1620, 1620.1–1620.9, 1622, 1630–1635, 1637, 1638, 331, 333, 335, 337, 341, 301, 303, 309, 311–316, 381, 347, 359. 361. 363, 364, 1639, 1830, 1900–1902, 1902.5, 1903–1908, 317, 319, 321, 323, 324, 324.5, 391, 325, 329, 327, 326, 371, 375, 375.1, 372, 373, 342, 343, 345, 369, 376, 222, 330, 378, 225, 383, 228, 230, 232, 232.5, 236.5, 236, 870, 870.2, 388, 875, 389, 234, 986, 870.4, 1701–1706, 1725 as rules 3.20, 3.110, 3.220– 3.222, 3.250, 3.252, 3.254, 3.300, 3.350, 3.400–3.403, 3.500–3.506, 3.510–3.515, 3.520–3.532, 3.540–3.545, 3.550, 3.650, 3.670, 3.700, 3.710–3.715, 3.734, 3.735, 3.744, 3.745, 3.760–3.771, 3.800, 3.810–3.830, 3.850–3.860, 3.870–3.877. 3.900–3.911, 3.1000, 3.1010, 3.1020, 3.1025, 3.1030, 3.1100, 3.1103, 3.1009, 3.1110, 3.1112–3.1116, 3.1130, 3.1140, 1.1150–3.1153, 3.751, 3.878, 3.1175–3.1184, 3.1300, 3.1302, 3.1304, 3.1306, 3.1308, 3.1310, 3.1312, 3.1320, 3.1322, 3.1324, 3.1326, 3.1330, 3.1332, 3.1335, 3.1340, 3.1342, 3.1350, 3.1352, 3.1354, 3.1360, 3.1362, 3.1380, 3.1382, 3.1384, 3.1385, 3.1390, 3.1540, 3.1560, 3.1580, 3.1590, 3.1591, 3.1600, 3.1602, 3.1700, 3.1702, 3.1800, 3.1802, 3.1804, 3.1806, 3.1900, 3.2000, 3.2100, 3.2102, 3.2104, 3.2106, 3.2108, 3.2110, and 3.2120; and repeal rules 985, 212, 244.1, 244.2, 991, 307, 379, 820, and 1636).</p>
Summary	<p>Title 3 would be reorganized to contain the Civil Rules. It would be reformatted in the new Judicial Council rules format. Stylistic changes would be made to the rules. A few especially lengthy rules would be broken into a series of rules organized into a division or chapter.</p>
Source	<p>Office of the General Counsel, Administrative Office of the Courts</p> <p>Working Group on Rules Reorganization, Civil and Small Claims Advisory Committee</p>
Staff	<p>Patrick O'Donnell, Senior Attorney, 415-865-7665, patrick.o'donnell@jud.ca.gov</p> <p>Douglas C. Miller, Attorney, 415-865-7535, douglas.miller@jud.ca.gov</p>

Discussion	<p data-bbox="418 237 558 268"><u>Overview</u></p> <p data-bbox="418 279 1404 474">Title 3 would contain the Civil Rules. The rules within this title would apply to all types of civil cases in the trial courts, including general civil, family, juvenile, and probate cases. The rules in former title 3 (Miscellaneous Rules) that do not apply to civil cases would be relocated to other titles.</p> <p data-bbox="418 510 1396 747">The civil rules in title 3 would be organized in a logical manner from prefiling matters to pretrial, trial, and post-trial matters. All headings in the title would be new. All of the rules would be in the new Judicial Council rules format presented in the attached rules. Stylistic changes would be made to the rules to make them clearer and more contemporary in language.</p> <p data-bbox="418 793 651 825"><u>Main Provisions</u></p> <p data-bbox="418 835 1370 989">Division 1 of the Civil Rules contains general provisions. These provisions would include a rule prescribing the name of the title (see Cal. Rules of Court, rule 3.1) and a rule on the scope of the title (see rule 3.2).</p> <p data-bbox="418 1035 1404 1230">The important rule under which the Judicial Council has preempted all local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and the form and format of papers would be located at the beginning of Title 1. (See rule 3.20 (currently rule 981.1).)</p> <p data-bbox="418 1276 1404 1556">Division 2 contains a set of rules on waiver of fees and costs. The rules in this division are based on current rule 985 (Permission to proceed without paying court fees and costs (in forma pauperis)). Because rule 985 is so long and covers so many different matters, it is desirable to break it up. New rules 3.50–3.63 are not intended to change any substantive provisions concerning the waiver of fees or costs, but only to present those provisions in a clearer, more understandable manner.</p> <p data-bbox="418 1602 1404 1871">Division 3 contains rules on filing and service in civil cases. This division includes a new rule on payment of filing fees by credit card (rule 3.100); a rule on the time for service of pleadings (rule 3.110 (based on rule 201.7)); a rule on papers to be served (rule 3.220 (based on rule 201.8)); a rule on limitations on the filing of papers (rule 3.250 (based on rule 201.5)); a rule on service of papers on the clerk when a party's address is unknown (rule 3.252 (based on rule 202.5)); and a</p>
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rule on the duty of plaintiffs to maintain and provide a service list (rule 3.254 (based on rule 202.7)).

Division 4 contains rules on parties and actions. It contains a rule on notice of related cases (rule 3.300 (based on rule 804)); a rule on consolidation of cases (rule 3.350 (based on rule 367)); rules on complex civil cases (rules 3.400–3.403 (based on rules (800–1812))); and rules on the coordination of noncomplex and complex civil cases (rules 3.500–3.550 (based on rule 1500–1550)).

Division 5 is reserved for future rules on venue.

Division 6 contains rules relating to proceedings, including a rule providing for notice of stay of proceedings (rule 3.650 (based on rule 224)) and a rule on telephone appearances at hearings and conferences (rule 3.670 (based on rule 298)).

Division 7 concerns civil case management. This division contains chapters on Differential Case Management, Case Management, the Management of Complex Cases, and the Management of Class Actions. The chapter on Case Management contains eleven rules (rules 3.720–3.730) that are based on current rule 212, which has become very lengthy. The chapter on the Management of Complex Cases contains new rule 3.750 based on subdivisions (e) and (f) of section 19 of the Standards of Judicial Administration, which would be repealed.

Division 8 concerns Alternative Dispute Resolution. This division includes a chapter on judicial arbitration (rules 3.810–3.830 (based on rules 1600–1618) and two chapters on mediation (rules 3.850–3.877 (based on rules 1620–1638)).

References are the subject of division 9. A set of revised rules (rules 3.900–3.927) would replace the two lengthy current rules concerning references in civil cases. The reference rules are divided into two chapters entitled, “Reference by Agreement of the Parties Under Code of Civil Procedure Section 638” and “Court–Appointed References Under Section 639.” Former subdivisions have been organized into separate rules presented in a more logical order. Stylistic changes have been made. The new rules on references are intended to be easier and more understandable.

Discovery is the subject of division 10. This division contains a rule

on the format of discovery motions (rule 3.1020 (based on rule 335)); a rule on service of motion papers on a nonparty deponent (rule 3.1025 (based on rule 337)); and a rule on sanctions for failure to provide discovery (rule 3.1030 (based on rule 341)).

Law and motion rules are in division 11. (See rules 3.1100–3.1362.) These rules are organized into chapters on General Provisions, Format of Motion Papers, Provisional and Injunctive Relief, Ex Parte Applications,¹ Noticed Motions, and Particular Motions. The rules on particular motions are under several separate articles on (1) pleading and venue motions; (2) procedural motions; (3) motions to dismiss; (4) summary judgment motions; and (5) miscellaneous motions.

The remainder of title 3 contains divisions on Settlement, Dismissal of Actions, Trial, Post-Trial, Attorney’s Fees and Costs, Judgments, and Post-judgment Enforcement of Judgments. The title also has two divisions with rules on special proceedings: unlawful detainers and small claims actions.

Comments

Comments are invited on the organization of the title, the stylistic revisions, and related issues.

Attachments

¹ The proposed changes to the ex parte rules in this proposal are intended to improve the format and style of the rules. In particular, because current rule 379 is so long and complicated, it appears desirable at this time to break it up to make it more comprehensible. The Civil and Small Claims Advisory Committee plans to consider various substantive changes to the ex parte rules, but these changes are not included in the proposed rules being circulated.

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1 **Title ~~THREE~~ 3. MISCELLANEOUS Civil Rules**

2
3 **Division 1. General Provisions**

4
5 **Chapter 1. Preliminary Rules**

6
7 **Rule 3.1. Title**

8
9 The rules in this title may be referred to as the Civil Rules.

10
11 **Chapter 2. Scope of the Civil Rules**

12
13 **Rule 3.10. Application**

14
15 The Civil Rules apply to all civil cases in the superior courts, including general civil,
16 family, juvenile, and probate cases, unless otherwise provided by a statute or rule in the
17 California Rules of Court.

18
19 **Rule ~~3.20.981.1~~ 3.1. Preemption of local rules**

20
21 **(a) Fields occupied**

22
23 The Judicial Council has preempted all local ~~court~~ rules relating to pleadings,
24 demurrers, ex parte applications, motions, discovery, provisional remedies, and the
25 form and format of papers. No trial court, or any division or branch of a trial court,
26 ~~shall~~ may enact or enforce any local rule concerning these fields. All local rules
27 concerning these fields are null and void ~~as of the effective date of this rule~~ unless
28 otherwise permitted or required by a statute or Judicial Council rule a rule in the
29 California Rules of Court.

30
31 **(b) Applicability**

32
33 This rule applies to all matters identified ~~above~~ in (a) except:

34
35 (i) (1) Trial and post-trial proceedings including but not limited to motions in
36 limine (see rule ~~3.1428(d)~~ 3.12(d));

37
38 (ii) (2) Proceedings under Code of Civil Procedure sections 527.6, 527.7, and
39 527.8; the Family Code; the Probate Code; the Welfare and Institutions
40 Code; and the Penal Code, and all other criminal proceedings;

41
42 (iii) (3) Eminent domain proceedings; and
43

(iv) (4) Local court rules adopted under the Trial Court Delay Reduction Act.

(Reviser's note: Existing rule 981.1 preempts all local rules on the form and format of papers as well as pleadings, demurrers, ex parte applications, motions, discovery, and provisional remedies. For clarity, the provisions of rule 981.1 relating to the preemption of form and format of papers have also been placed in rule 2.100(a)–(b) in title 2.)

Division 2. Waiver of Fees and Costs

(Reviser's note: Current rule 985 has been separated into new rules 3.50–3.63.)

~~Rule 985. Permission to proceed without paying court fees and costs (in forma pauperis)~~

(a) Application

~~An application to proceed in forma pauperis shall be made on Judicial Council form 982(a)(17). An application for waiver of additional court fees and costs under subdivision (j) shall be made on form 982(a)(20). The clerk shall provide the form without charge to any person who requests it or indicates that he or she is unable to pay any court fee or cost. No applicant shall be required to complete any form as part of his or her application under this rule other than forms adopted by the Judicial Council, except as authorized by subdivision (e)(1) of Government Code section 68511.3. Upon the receipt of an application, the clerk shall immediately file the application and any pleading or other paper presented by the applicant.~~

(b) Eligibility

~~An application to proceed in forma pauperis shall be granted and payment of court fees and costs listed in subdivision (i) shall be waived if the applicant meets the standards of eligibility established by subdivision (a)(6)(A) or (a)(6)(B) of Government Code section 68511.3. An application shall be granted and payment of those court fees and costs listed in subdivision (j) that the court finds necessary shall be waived if the applicant meets the standards of eligibility established by subdivision (a)(6)(A) or (a)(6)(B) of Government Code section 68511.3. Any other order granting the application under that section or otherwise may waive payment of part or all of the fees and costs and may provide that a lien exists on any money recovered by the applicant for any waived fees and costs, which shall be deemed to be taxable costs.~~

~~The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's~~

1 financial condition. As part of the reasonable efforts to verify a litigant's financial
2 condition, the court, the clerk of the court, the county financial officer, or another
3 appropriate county officer may not require that all applicants submit documentation
4 to support the information set forth in the application, except as authorized by
5 subdivisions (b)(1) and (c)(1) of Government Code section 68511.3. Additional
6 documentation of a litigant's financial condition shall be required only if the
7 applicant failed to provide the information required by the application form or if the
8 court has good reason to doubt the truthfulness of the factual allegations in the
9 application. If the litigant is required to submit additional documentation of his or
10 her financial condition, the court or an authorized clerk of the court, the county
11 financial officer, or another appropriate county officer shall:

- 12
- 13 (1) Inform the litigant of the information in the application that is insufficient or
14 that the court believes may not be truthful;
- 15
- 16 (2) Inform the litigant of the specific type or types of documentation the litigant is
17 required to submit;
- 18
- 19 (3) Require the litigant to submit only such documentation as the litigant has in
20 his or her possession or that the litigant can obtain with reasonable efforts; and
- 21
- 22 (4) Require the litigant to submit only such documentation as will clarify or prove
23 the truthfulness of the factual allegations in the application.
- 24

25 **(e) Pleading or paper submitted for filing**

26

27 The application shall be determined without regard to the applicant's pleading or
28 other paper filed, if any. If the application is denied, any paper filed without
29 payment of fees is ineffective unless the fees are paid within ten days after notice is
30 given by the clerk pursuant to subdivision (d). If the fees are paid after ten days, the
31 date the applicant's pleading or other paper was originally presented to the clerk is
32 the date for determining whether the action or proceeding was commenced within
33 the period provided by law.

34

35 **(d) Procedure for determining application**

36

37 The court shall consider and determine the application in accordance with
38 Government Code section 68511.3. An order determining an application for in
39 forma pauperis status shall be made on form 982(a)(18). An order denying the
40 application, in whole or in part, shall include a statement of reasons as required by
41 Government Code section 68511.3. The clerk shall forthwith mail or deliver a copy
42 of the order to the attorney for the applicant or, if no attorney, to the applicant if the

1 application is not granted in full and, if the application is denied, to each other party
2 who has appeared in the action or proceeding.
3

4 The court may delegate to the clerk in writing the authority to grant applications
5 that meet the standards of eligibility established by subdivision (a)(6)(A) or
6 (a)(6)(B) of section 68511.3 of the Government Code. The court may not delegate
7 authority to deny an application.
8

9 **(e) Application granted after five court days**
10

11 The application is granted within five court days after it is filed unless acted upon
12 by the court during that time. If the application is granted by operation of this
13 subdivision, the clerk shall execute a Notice of Waiver of Court Fees and Costs on
14 form 982(a)(19).
15

16 **(f) Hearing**
17

18 If the court determines within five court days after the application is filed that there
19 is substantial evidentiary conflict concerning the applicant's eligibility for in forma
20 pauperis status, the clerk shall promptly give the applicant no less than ten days'
21 written notice of a hearing. To ensure confidentiality of the applicant's financial
22 information the hearing shall be held in private and the court shall exclude all
23 persons except court attachés, the applicant, those present with the applicant's
24 consent, and any witness being examined.
25

26 **(g) Changed circumstances; duty to notify court**
27

28 A person who has been granted in forma pauperis status shall promptly notify the
29 court of any changed financial circumstances affecting his or her ability to pay court
30 fees and costs. The court shall not reconsider that person's eligibility prior to the
31 final determination of the case except in connection with an application for waiver
32 of additional court fees and costs under subdivision (j) of this rule or in accordance
33 with subdivision (d) of Government Code section 68511.3. The court may authorize
34 the clerk of the court, the county financial officer, or another appropriate county
35 officer to determine whether the litigant's financial condition has changed, enabling
36 the litigant to pay all or a portion of the fees and costs that were waived, under the
37 following procedures:
38

- 39 (1) The authorized officer shall notify the litigant personally or in writing that the
40 litigant must complete a new application to proceed in forma pauperis and file
41 it with the clerk.
42

- 1 (2) ~~The notice shall be accompanied by a blank application form prescribed by~~
2 ~~rule 982(a).~~
3
4 (3) ~~No litigant shall be required to submit a new completed application form more~~
5 ~~frequently than once every four months.~~
6
7 (4) ~~The authorized officer shall review the new application. If he or she~~
8 ~~determines that the litigant's financial condition has changed, the court may~~
9 ~~order the litigant to pay such sum and in such manner as the court believes is~~
10 ~~compatible with the litigant's financial ability.~~

11
12 **(h) Confidentiality**

13
14 ~~No person shall have access to the application except the court and authorized~~
15 ~~attachés, persons authorized to verify the information pursuant to subdivision (b)~~
16 ~~and Government Code section 68511.3, and any person authorized by the applicant.~~
17 ~~No person shall reveal any information contained in the application except as~~
18 ~~authorized by law.~~

19
20 **(i) Court fees and costs waived by initial application**

21
22 ~~Court fees and costs waived upon granting an application to proceed in forma~~
23 ~~pauperis include, but are not limited to, the following:~~

- 24
25 (1) ~~Clerk's fees for filing papers;~~
26
27 (2) ~~Clerk's fees for reasonably necessary certification and copying;~~
28
29 (3) ~~Clerk's fees for issuance of process and certificates;~~
30
31 (4) ~~Clerk's fees for transmittal of papers;~~
32
33 (5) ~~Court-appointed interpreter's fees for parties in small claims actions;~~
34
35 (6) ~~Sheriff's, marshal's, and constable's fees pursuant to article 7 of title 3 of~~
36 ~~division 2 of the Government Code;~~
37
38 (7) ~~Reporter's fees for attendance at hearings and trials held within 60 days of the~~
39 ~~date of the order granting the application;~~
40
41 (8) ~~The fee for a telephone appearance pursuant to Government Code section~~
42 ~~68070.1(c);~~
43

(9) Clerk's fees for preparing, certifying, and transmitting the clerk's transcript on appeal. A litigant proceeding in forma pauperis shall specify with particularity the documents to be included in the clerk's transcript on appeal.

(j) ~~Additional court fees and costs waived~~

~~The court fees and costs that may be waived upon application include:~~

- ~~(1) Jury fees and expenses;~~
- ~~(2) Court-appointed interpreter's fees for witnesses;~~
- ~~(3) Witness fees of peace officers whose attendance is reasonably necessary for prosecution or defense of the case;~~
- ~~(4) Reporter's fees for attendance at hearings and trials held more than 60 days after the date of the order granting the application;~~
- ~~(5) Witness fees of court-appointed experts;~~
- ~~(6) Other fees or expenses as itemized in the application.~~

(k) ~~Posting notice~~

~~Each trial court shall post in a conspicuous place near the filing window or counter a notice, 8½ by 11 inches or larger, advising litigants in English and Spanish that they may ask the court to waive court fees and costs. The notice shall be substantially as follows: "NOTICE: If you are unable to pay fees and costs, ask the court to permit you to proceed without paying them. Ask the clerk for the Information Sheet on Waiver of Court Fees and Costs and the Application for Waiver of Court Fees and Costs."~~

Rule 3.50. Application

The rules in this division govern applications for an order to proceed in forma pauperis—that is, without paying court fees and costs because of the applicant's financial condition.

Rule 3.51. Method of application and filing of papers

(a) Mandatory application forms

An application to proceed in forma pauperis must be made on *Application for Waiver of Court Fees and Costs* (form 982(a)(17)) . An application for waiver of

1 additional court fees and costs under rule 3.62 must be made on *Application for*
2 *Waiver of Additional Court Fees and Costs* (form 982(a)(20)) . The clerk must
3 provide either form without charge to any person who requests it or indicates that he
4 or she is unable to pay any court fee or cost.

5
6 **(b) Other forms**

7
8 No applicant may be required to complete any form as part of his or her application
9 under this rule other than forms adopted by the Judicial Council, except as
10 authorized by Government Code section 68511.3(e)(1). Upon receipt of an
11 application, the clerk must immediately file the application and any pleading or
12 other paper presented by the applicant.

13
14 **Rule 3.52. Eligibility**

15
16 **(a) Mandatory**

17
18 The court must grant an application to proceed in forma pauperis and must waive
19 payment of court fees and costs listed in rule 3.61, and must waive payment of
20 those additional court fees and costs listed in rule 3.62 that the court finds
21 necessary, if the applicant meets the standards of eligibility established by
22 Government Code section 68511.3(a)(6)(A) or (a)(6)(B).

23
24 **(b) Discretionary**

25
26 Except for an order required under (a), the court may make an order granting an
27 application to proceed in forma pauperis under Government Code section 68511.3
28 or otherwise. The order may waive payment of part or all of the fees and costs and
29 may provide that a lien exists on any money recovered by the applicant for any
30 waived fees and costs, which shall be deemed to be taxable costs.

31
32 **Rule 3.53. Verification of financial condition**

33
34 **(a) Reasonable efforts to verify financial condition**

35
36 The court may authorize the clerk of the court, a county financial officer, or other
37 appropriate county officer to make reasonable efforts to verify an applicant's
38 financial condition. The reasonable efforts to verify must not include requiring all
39 applicants to submit documentation to support the information contained in their
40 applications except as authorized by Government Code section 68511.3 (b)(1) and
41 (e)(1).

1 **(b) Additional documentation**

2
3 Additional documentation of an applicant's financial condition may be required
4 only if the applicant failed to provide the information required by the application
5 form or if the court has good reason to doubt the truthfulness of the factual
6 allegations in the application. If the applicant is required to submit additional
7 documentation of his or her financial condition, the court or person authorized
8 under (a) must:

- 9
10 (1) Inform the applicant of the information in the application that is insufficient or
11 that the court believes may not be truthful;
12
13 (2) Inform the applicant of the specific type or types of documentation the
14 applicant must submit;
15
16 (3) Require the applicant to submit only documentation that the applicant has in
17 his or her possession or can obtain with reasonable efforts; and
18
19 (4) Require the applicant to submit only enough documentation as is necessary to
20 clarify or prove the truthfulness of the factual allegations in the application.
21

22 **Rule 3.54. Determination without regard to pleading or paper submitted for filing**

23
24 The court must determine an application to proceed in forma pauperis without regard to
25 the applicant's pleading or other paper filed, if any.
26

27 **Rule 3.55. Effect of denial of application; time for payment of fees**

28
29 If an application is denied, any paper filed without payment of fees is ineffective unless
30 the fees are paid within 10 days after notice is given by the clerk under rule 3.56. If the
31 fees are paid more than 10 days after that notice was given, the date the applicant's
32 pleading or other paper was originally presented to the clerk is the date for determining
33 whether the action or proceeding was commenced within the period provided by law.
34

35 **Rule 3.56. Procedure for determining application**

36
37 The procedure for determining an application is as follows:
38

- 39 (1) The court must consider and determine the application as required by Government
40 Code section 68511.3.
41

- 1 (2) An order determining an application to proceed in forma pauperis must be made on
2 Order on Application for Waiver of Court Fees and Costs (In Forma Pauperis)
3 (form 982(a)(18)) .
4
- 5 (3) An order denying an application to proceed in forma pauperis, in whole or in part,
6 must include a statement of the reasons for the denial as required by Government
7 Code section 68511.3.
8
- 9 (4) The clerk must immediately mail or deliver a copy of the order to the attorney for
10 the applicant or, if no attorney, to the applicant if the application is not granted in
11 full and, if the application is denied, to each other party who has appeared in the
12 action or proceeding.
13
- 14 (5) The court may delegate to the clerk in writing the authority to grant applications to
15 proceed in forma pauperis that meet the standards of eligibility in Government Code
16 section 68511.3(a)(6)(A) or (a)(6)(B). The court may not delegate authority to deny
17 an application.
18

19 **Rule 3.57. Application granted unless acted on by the court**
20

21 The application to proceed in forma pauperis is deemed granted unless acted on by the
22 court within five court days after it is filed. If the application is deemed granted under
23 this provision, the clerk must execute a Notice of Waiver of Court Fees and Costs (In
24 Forma Pauperis) (form 982(a)(19)) five court days after the application is filed.
25

26 **Rule 3.58. Hearing on application**
27

28 **(a) Notice of hearing**
29

30 If the court determines that there is substantial evidentiary conflict concerning the
31 applicant's eligibility to proceed in forma pauperis, the clerk must immediately give
32 the applicant at least 10 days' written notice of a hearing.
33

34 **(b) Confidentiality of hearing**
35

36 To ensure confidentiality of the applicant's financial information, the hearing must
37 be held in private and the court must exclude all persons except court attachés, the
38 applicant, those present with the applicant's consent, and any witness being
39 examined.
40

41 **Rule 3.59. Changed circumstances**
42

1 **(a) Duty to notify court of changed circumstances**

2
3 A person whose application to proceed in forma pauperis has been granted must
4 promptly notify the court of any changed financial circumstances affecting his or
5 her ability to pay court fees and costs.
6

7 **(b) Reconsideration by court**

8
9 The court may not reconsider a successful applicant's eligibility to proceed in forma
10 pauperis before the final determination of the case except in connection with an
11 application for waiver of additional court fees and costs under rule 3.62 or in
12 accordance with Government Code section 68511.3(d).
13

14 **(c) Authorization to determine if condition has changed**

15
16 The court may authorize the clerk of the court, the county financial officer, or
17 another appropriate county officer to determine whether a successful applicant's
18 financial condition has changed, enabling the applicant to pay all or a portion of the
19 fees and costs that were waived, in the following manner:
20

21 (1) The authorized officer must notify the applicant personally or in writing that
22 the applicant must complete and file a new application to proceed in forma
23 pauperis.
24

25 (2) The notice under (1) must be accompanied by a blank application form.
26

27 (3) No applicant may be required to submit a new completed application more
28 frequently than once every four months.
29

30 (4) The authorized clerk or county officer must review the new application. If the
31 clerk or officer determines that the applicant's financial condition has
32 changed, the court may order the applicant to pay a sum in a manner that the
33 court believes is compatible with the applicant's financial ability.
34

35 **Rule 3.60. Confidentiality**

36
37 No person may have access to an application to proceed in forma pauperis except the
38 court and authorized attachés, persons authorized to verify the information under rules
39 3.53 and 3.59(c) and under Government Code section 68511.3, and any person authorized
40 by the applicant. No person may reveal any information contained in the application
41 except as authorized by law.
42

1 **Rule 3.61. Court fees and costs waived by initial application**

2
3 Court fees and costs that must be waived upon granting an application to proceed in
4 forma pauperis include:

- 5
6 (1) Clerk's fees for filing papers;
7
8 (2) Clerk's fees for reasonably necessary certification and copying;
9
10 (3) Clerk's fees for issuance of process and certificates;
11
12 (4) Clerk's fees for transmittal of papers;
13
14 (5) Court-appointed interpreter's fees for parties in small claims actions;
15
16 (6) Sheriff's and marshal's fees under article 7 of title 3 of division 2 of the
17 Government Code;
18
19 (7) Reporter's fees for attendance at hearings and trials held within 60 days of the date
20 of the order granting the application;
21
22 (8) The fee for a telephone appearance under Government Code section 68070.1(c);
23 and
24
25 (9) Clerk's fees for preparing, certifying, and transmitting the clerk's transcript on
26 appeal. A party proceeding in forma pauperis must specify with particularity the
27 documents to be included in the clerk's transcript on appeal.
28

29 **Rule 3.62. Additional court fees and costs waived**

30
31 The court fees and costs that may be waived upon granting an application include:
32

- 33 (1) Jury fees and expenses;
34
35 (2) Court-appointed interpreter's fees for witnesses;
36
37 (3) Witness fees of peace officers whose attendance is reasonably necessary for
38 prosecution or defense of the case;
39
40 (4) Reporter's fees for attendance at hearings and trials held more than 60 days after the
41 date of the order granting the application;
42
43 (5) Witness fees of court-appointed experts; and

(6) Other fees or expenses as itemized in the application.

Rule 3.63. Posting notice

Each trial court must post in a conspicuous place near the filing window or counter a notice, 8½ by 11 inches or larger, advising litigants in English and Spanish that they may ask the court to waive court fees and costs. The notice must be substantially as follows:

“NOTICE: If you are unable to pay fees and costs, ask the court to permit you to proceed without paying them. Ask the clerk for the *Information Sheet on Waiver of Court Fees and Costs* and the *Application for Waiver of Court Fees and Costs*.”

Division 3. Filing and Service

Chapter 1. Filing

Rule 3.100. Payment of filing fees by credit or debit card

A party may pay a filing fee by credit or debit card provided the court is authorized to accept payment by this method under Government Code section 6159, rule 6.703 , and other applicable law.

(Reviser’s note: Rule 3.100 is new. It cross-references the authority for courts to accept payments by credit and debit cards.)

Chapter 2. Time for Service

Rule 3.110.201.7. Time for service of complaint, cross-complaint, and response

(a) Applicability

This rule applies to the service of pleadings in civil cases except for unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law.

(b) Service of complaint

The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint. When the complaint is amended to add a defendant, the added defendant must be served and proof of service must be filed within 30 days after the filing of the amended complaint.

1
2 **(c) Service of cross-complaint**
3

4 A cross-complaint against a party who has appeared in the action must be
5 accompanied by proof of service of the cross-complaint at the time it is filed. If the
6 cross-complaint adds new parties, the cross-complaint must be served on all parties
7 and proofs of service on the new parties must be filed within 30 days of the filing of
8 the cross-complaint.
9

10 **(d) Timing of responsive pleadings**
11

12 The parties may stipulate without leave of court to one 15-day extension beyond the
13 30-day time period prescribed for the response after service of the initial complaint.
14

15 **(e) Modification of timing; application for order extending time**
16

17 The court, on its own motion or on the application of a party, may extend or
18 otherwise modify the times provided in (b)–(d). An application for a court order
19 extending the time to serve a pleading must be filed before the time for service has
20 elapsed. The application must be accompanied by a declaration showing why
21 service has not been ~~effected~~ completed, documenting the efforts that have been
22 made to ~~effect~~ complete service, and specifying the date by which service is
23 proposed to be ~~effected~~ completed.
24

25 **(f) Failure to serve**
26

27 ~~Unless the court has granted an order extending the time to serve a complaint or~~
28 ~~cross-complaint, the failure~~ If a party fails to serve and file pleadings as required
29 ~~under this rule, and has not obtained an order extending time to serve its pleadings,~~
30 ~~the court may result in may issue an order to show cause being issued as to why~~
31 ~~sanctions shall not be imposed.~~
32

33 **(g) Request for entry of default**
34

35 If a responsive pleading is not served within the time limits specified in this rule
36 and no extension of time has been granted, the plaintiff ~~within 10 days after the time~~
37 ~~for service has elapsed~~ must file a request for entry of default within 10 days after
38 the time for service has elapsed. The court may issue an order to show cause why
39 sanctions should not be imposed if the plaintiff fails ~~Failure~~ to timely file the
40 request for the entry of default ~~may result in an Order to Show Cause being issued~~
41 ~~as to why sanctions shall not be imposed.~~
42

1 **(h) Default judgment**

2
3 When a default is entered, the party who requested the entry of default must obtain
4 a default judgment against the defaulting party within 45 days after ~~entry of the~~
5 default was entered, unless the court has granted an extension of time. The court
6 may issue an order to show cause why sanctions should not be imposed if that party
7 fails ~~Failure~~ to obtain entry of judgment against a defaulting party or to request an
8 extension of time to apply for a default judgment ~~may result in an Order to Show~~
9 ~~Cause being issued as to why sanctions shall not be imposed~~ within that time.

10
11 **(i) Order to show cause**

12
13 ~~When the court issues an Order to Show Cause under this rule, responsive papers to~~
14 ~~the Order to Show Cause must be filed and served no less than 5 calendar days~~
15 ~~before the hearing. Responsive papers to an order to show cause issued under this~~
16 ~~rule must be filed and served at least 5 calendar days before the hearing.~~

17
18 **Chapter 3. Papers to Be Served**

19
20 **Rule ~~3.220.201.8~~. Case Cover Sheet required**

21
22 **(a) Cover sheet required**

23
24 The first paper filed in an action or proceeding must be accompanied by a case
25 cover sheet as required in (b). The cover sheet must be on a form prescribed by the
26 Judicial Council and must be filed in addition to any cover sheet required by local
27 court rule. If the plaintiff indicates on the cover sheet that the case is complex under
28 rule 3.400 ~~1800~~ et seq., the plaintiff must serve a copy of the cover sheet with the
29 complaint. In all other cases, the plaintiff is not required to serve the cover sheet.
30 The cover sheet is used for statistical purposes and may affect the assignment of a
31 complex case.

32
33 **(b) List of cover sheets**

- 34
35 (1) *Civil Case Cover Sheet* (form CM-010) must be filed in each civil action or
36 proceeding, except those filed in small claims court or filed under the Probate
37 Code, Family Law Code, or Welfare and Institutions Code.
38
39 (2) [**Note:** Case cover sheets will be added for use in additional areas of the law
40 as the data collection program expands.]

41
42 **(c) Failure to provide cover sheet**

1 If a party that is required to provide a cover sheet under this rule or a similar local
2 rule fails to do so or provides a defective or incomplete cover sheet at the time the
3 party's first paper is submitted for filing, the clerk of the court must file the paper.
4 Failure of a party or a party's counsel to file a cover sheet as required by this rule
5 may subject that party, its counsel, or both, to sanctions under rule 2.30227.
6

7 **Rule 3.221.201.9. Information about Alternative Dispute Resolution**
8

9 **(a) Court to provide information package**
10

11 Each court must make available to the plaintiff, at the time ~~of filing of the complaint~~
12 the complaint is filed in all general civil cases, an Alternative Dispute Resolution
13 (ADR) information package that includes, at a minimum, all of the following:
14

- 15 (1) General information about the potential advantages and disadvantages of ADR
16 and descriptions of the principal ADR processes. The Administrative Office of
17 the Courts has prepared model language that the courts may use to provide
18 this information.
19
- 20 (2) Information about the ADR programs available in that court, including
21 citations to any applicable local court rules and directions for contacting any
22 court staff responsible for providing parties with assistance regarding ADR.
23
- 24 (3) In counties that are participating in the Dispute Resolution Programs Act
25 (DRPA), information about the availability of local dispute resolution
26 programs funded under the DRPA. This information may take the form of a
27 list of the applicable programs or directions for contacting the county's DRPA
28 coordinator.
29
- 30 (4) An ADR stipulation form that parties may use to stipulate to the use of an
31 ADR process.
32

33 **(b) Court may make package available on Web site**
34

35 A court may make the ADR information package available on its Web site as long
36 as paper copies are also made available in the clerk's office.
37

38 **(c) Plaintiff to serve information package**
39

40 In all general civil cases, the plaintiff must serve a copy of the ADR information
41 package on each defendant ~~along together~~ with the complaint. Cross-complainants
42 must serve a copy of the ADR information package on any new parties to the action
43 ~~along together~~ with the cross-complaint.

1
2 **Rule ~~3.222,202~~. Papers to be served on cross-defendants**

3
4 A cross-complainant must serve a copy of the complaint or, if it has been amended, of the
5 most recently amended complaint and any answers thereto on cross-defendants who have
6 not previously appeared.
7

8 **Chapter 4. Miscellaneous**

9
10 **Rule ~~3.250,201.5~~. Limitations on the filing of papers**

11
12 **(a) Papers not to be filed**

13
14 The following papers, whether offered separately or as attachments to other
15 documents, may not be filed unless they are offered as relevant to the determination
16 of an issue in a law and motion proceeding or other hearing or are ordered filed for
17 good cause:
18

- 19 (1) Subpoena;
20
21 (2) Subpoena duces tecum;
22
23 (3) Deposition notice, and response;
24
25 (4) Notice to consumer or employee, and objection;
26
27 (5) Notice of intention to record testimony by audio or video tape;
28
29 (6) Notice of intention to take an oral deposition by telephone, videoconference,
30 or other remote electronic means;
31
32 (7) Agreement to set or extend time for deposition, agreement to extend time for
33 response to discovery requests, and notice of these agreements;
34
35 (8) Interrogatories, and responses or objections to interrogatories;
36
37 (9) Demand for production or inspection of documents, things, and places, and
38 responses or objections to demand;
39
40 (10) Request for admissions, and responses or objections to request;
41
42 (11) Agreement for physical and mental examinations;
43

- 1 (12) Demand for delivery of medical reports, and response;
2
3 (13) Demand for exchange of expert witnesses;
4
5 (14) Demand for production of discoverable reports and writings of expert
6 witnesses;
7
8 (15) List of expert witnesses whose opinion a party intends to offer in evidence at
9 trial and declaration;
10
11 (16) Statement that a party does not presently intend to offer the testimony of any
12 expert witness;
13
14 (17) Declaration for additional discovery;
15
16 (18) Stipulation to enlarge the scope of number of discovery requests from that
17 specified by statute, and notice of the stipulation;
18
19 (19) Demand for bill of particulars or an accounting, and response;
20
21 (20) Request for statement of damages, and response, unless it is accompanied by a
22 request to enter default and is the notice of special and general damages;
23
24 (21) Notice of deposit of jury fees;
25
26 (22) Notice to produce party, agent, or tangible things before a court, and response;
27 and
28
29 (23) Offer to compromise, unless accompanied by an original proof of acceptance
30 and a written judgment for the court's signature and entry of judgment.
31

32 **(b) Retaining originals of papers not filed**
33

34 Unless the paper served is a response, the party who serves a paper listed in (a)
35 must retain the original with the original proof of service affixed. The original of a
36 response must be served, and it must be retained by the person upon whom it is
37 served. All original papers must be retained until six months after final disposition
38 of the ~~cause~~ case, unless the court on motion of any party and for good cause shown
39 orders the original papers preserved for a longer period.
40

41 **(c) Papers defined**
42

1 As used in this rule, papers include printed forms furnished by the clerk, but do not
2 include notices filed and served by the clerk.

3
4 **Rule ~~3.252.202.5~~. Service of papers on the clerk when a party's address is unknown**

5
6 **(a) Service of papers**

7
8 When service is made under Code of Civil Procedure section 1011(b) and a party's
9 residence address is unknown, the notice or papers delivered to the clerk, or to the
10 judge if there is no clerk, must be enclosed in an envelope addressed to the party in
11 care of the clerk or the judge.

12
13 **(b) Information on the envelope**

14
15 The back of the envelope delivered under (a) must bear the following information:

16
17 "Service is being made under Code of Civil Procedure section 1011(b) on a party
18 whose residence address is unknown."

19
20 [Name of party whose residence address is unknown]

21
22 [Case name and number]

23
24 **Rule ~~3.254.202.7~~. List of parties**

25
26 **(a) Duties of first-named plaintiff or petitioner**

27
28 If more than two parties have appeared in a case and are represented by different
29 counsel, the plaintiff or petitioner named first in the complaint or petition must:

30
31 (1) Maintain a current list of the parties and their addresses for service of notice
32 on each party; and

33
34 (2) Furnish a copy of the list on request to any party or the court.

35
36 **(b) Duties of each party**

37
38 Each party must:

39
40 (1) Furnish the first-named plaintiff or petitioner with its current address for
41 service of notice when it first appears in the action;

- 1 (2) Furnish the first-named plaintiff or petitioner with any changes in its address
2 for service of notice; and
3
4 (3) If it serves an order, notice, or pleading on a party who has not yet appeared in
5 the action, serve a copy of the list required under (a) at the same time as the
6 order, notice, or pleading is served.
7

8 **Division 4. Parties and Actions**

9 **Chapter 1. [Reserved]**

10 **Chapter 2. Joinder of Parties [Reserved]**

11 **Chapter 3. Related Cases**

12 **Rule 3.300.804. Notice of Related Case**

13 **(a) Duty of ~~counsel~~ to provide notice**

14 Whenever ~~counsel~~ a party in a civil action knows or learns that the action or
15 proceeding is related to another action or proceeding pending in any state or federal
16 court in California, ~~counsel~~ the party must ~~shall~~ promptly serve and file ~~and serve~~ a
17 Notice of Related Case. The Notice ~~shall~~ must also be served on all known parties
18 in each related action or proceeding. It ~~shall~~ must state the court, title, case number,
19 and filing date of each related action or proceeding, together with a brief statement
20 of their relationship. If the case is pending in the same court, ~~it the Notice shall~~ must
21 also give reasons why assignment to a single judge is or is not likely to effect
22 economies.
23

24 **(b) Continuing duty to provide notice**

25 ~~This~~ The duty under (a) is a continuing duty that applies when ~~counsel~~ a party files
26 a case with knowledge of a related action or proceeding, and applies thereafter
27 whenever ~~counsel~~ a party learns of a related action or proceeding.
28

29 **~~(b)~~ (c) Definition of “related case”**

30 An action or proceeding is “related” to another when both:
31

- 32 (1) Involve the same parties and are based on the same or similar claims; or
33
34 (2) Involve the same property, transaction, or event; or
35
36
37
38
39
40
41
42
43

(3) Involve substantially the same facts and the same questions of law.

(e) (d) Response

Within 10 days after service upon a party of a Notice of Related Case, the party may serve and file ~~and serve~~ a response supporting or opposing the Notice. A timely response will be considered when the court determines what action may be appropriate to coordinate the cases formally or informally.

~~(d)~~ (e) Judicial action

On notice to ~~counsel~~ the parties, the judge to whom the case is assigned may confer informally with the parties, and with the judge to whom each related case is assigned, to determine the feasibility and desirability of joint discovery orders and other informal or formal means of coordinating proceedings in the cases.

Chapter 4. Consolidated Cases

Rule 3.350.367. Consolidation of cases

(a) Requirements of motion

(1) A notice of motion to consolidate must:

(A) List all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;

(B) ~~The notice of motion must~~ Contain the captions of all the cases sought to be consolidated, with the lowest numbered case shown listed first; and

(C) Be filed in each case sought to be consolidated.

(2) The motion to consolidate:

(A) ~~shall be~~ Is deemed a single motion for the purpose of determining the appropriate filing fee. ~~One copy of the notice of motion must be filed in each case sought to be consolidated; but points and authorities memorandums, declarations, and other supporting papers shall~~ must be filed only in the lowest numbered case;

(B) ~~The motion~~ Must be served on all attorneys of record and all nonrepresented parties in all of the cases sought to be consolidated; and

1 (C) Must have a proof of service filed as part of the motion.

2
3 (b) **Lead case**

4
5 Unless otherwise ~~ordered~~ provided in the order granting the motion to consolidate,
6 the lowest numbered case in the consolidated case ~~shall be~~ is the lead case.

7
8 (c) **Order**

9
10 An order granting or denying all or part of a motion to consolidate ~~shall~~ must be
11 filed in each case sought to be consolidated. If the motion is granted for all purposes
12 including trial, any subsequent document ~~shall~~ must be filed only in the lead case.

13
14 (d) **Caption and case number**

15
16 All documents filed in the consolidated case ~~shall~~ must include the caption and case
17 number of the lead case, followed by the case numbers of all of the other
18 consolidated cases.

19
20 **Chapter 5. Complex Cases**

21
22 **Rule ~~3.400.1800.~~ Definition**

23
24 (a) **Definition**

25
26 A “complex case” is an action that requires exceptional judicial management to
27 avoid placing unnecessary burdens on the court or the litigants and to expedite the
28 case, keep costs reasonable, and promote effective decision making by the court, the
29 parties, and counsel.

30
31 (b) **Factors**

32
33 In deciding whether an action is a complex case under ~~subdivision~~ (a), the court
34 ~~shall~~ must consider, among other things, whether the action is likely to involve:

- 35
36 (1) Numerous pretrial motions raising difficult or novel legal issues that will be
37 time-consuming to resolve;
38
39 (2) Management of a large number of witnesses or a substantial amount of
40 documentary evidence;
41
42 (3) Management of a large number of separately represented parties;
43

(4) Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or

(5) Substantial postjudgment judicial supervision.

(c) Provisional designation

Except as provided in ~~subdivision~~ (d), an action is provisionally a complex case if it involves one or more of the following types of claims:

(1) Antitrust or trade regulation claims;

(2) Construction defect claims involving many parties or structures;

(3) Securities claims or investment losses involving many parties;

(4) Environmental or toxic tort claims involving many parties;

(5) Claims involving mass torts;

(6) Claims involving class actions; or

(7) Insurance coverage claims arising out of any of the claims listed in ~~subdivisions~~ (c)(1) through (c)(6).

(d) Court's discretion

Notwithstanding ~~subdivision~~ (c), an action is not provisionally complex if the court has significant experience in resolving like claims involving similar facts and the management of those claims has become routine. A court may declare by local rule that certain types of cases are or are not provisionally complex ~~pursuant to~~ under this subdivision.

Rule ~~3.401.1810.~~ Complex case designation

A plaintiff may designate an action as a complex case by filing and serving with the initial complaint the *Civil Case Cover Sheet* (form CM-010) marked to indicate the action is a complex case.

Rule ~~3.402.1811.~~ Complex case counterdesignations

(a) Noncomplex counterdesignation

1 If a *Civil Case Cover Sheet* (form CM-010) designating an action as a complex case
2 has been filed and served and the court has not previously declared the action to be
3 a complex case, a defendant may file and serve no later than its first appearance a
4 counter *Civil Case Cover Sheet* (form CM-010) designating the action as not a
5 complex case. The court must decide, with or without a hearing, whether the action
6 is a complex case within 30 days after the filing of the counterdesignation.
7

8 **(b) Complex counterdesignation**
9

10 A defendant may file and serve no later than its first appearance a counter *Civil*
11 *Case Cover Sheet* (form CM-010) designating the action as a complex case. The
12 court must decide, with or without a hearing, whether the action is a complex case
13 within 30 days after the filing of the counterdesignation.
14

15 **(c) Joint complex designation**
16

17 A defendant may join the plaintiff in designating an action as a complex case.
18

19 **Rule 3.403.1812. Action by court**
20

21 **(a) Decision on complex designation**
22

23 Except as provided in rule 3.402 1811, if a *Civil Case Cover Sheet* (form CM-010)
24 designating an action as a complex case has been filed and served, the court must
25 decide as soon as reasonably practicable, with or without a hearing, whether the
26 action is a complex case.
27

28 **(b) Court's continuing power**
29

30 With or without a hearing, the court may decide on its own motion, or on a noticed
31 motion by any party, that a civil action is a complex case or that an action
32 previously declared to be a complex case is not a complex case.
33

34 **Chapter 6. Coordination of Noncomplex Actions**
35

36 **Rule 3.500.1500. Transfer and consolidation of noncomplex common-issue actions**
37 **filed in different courts**
38

39 **(a) Application**
40

41 This rule applies when a motion under Code of Civil Procedure section 403 is filed
42 requesting transfer and consolidation of noncomplex cases involving a common
43 issue of fact or law filed in different courts.

1
2 **~~(a)~~ (b) Preliminary step**

3
4 A party ~~who~~ that intends to file a motion under Code of Civil Procedure section 403
5 must first make a good-faith effort to obtain agreement of all parties to each case to
6 the proposed transfer and consolidation.
7

8 **~~(b)~~ (c) Motion and hearing**

9
10 A motion to transfer an action ~~pursuant to~~ under Code of Civil Procedure section
11 403 ~~shall~~ must conform to the requirements generally applicable to motions, and
12 ~~shall~~ must be supported by a declaration stating facts showing that:
13

14 (1) The actions are not complex,; ~~and~~

15
16 (2) The moving party has made a good-faith effort to obtain agreement to the
17 transfer and consolidation from all parties to the actions,; and
18

19 (3) The moving party has notified all parties of their obligation to disclose to the
20 court any information they may have concerning any other motions requesting
21 transfer of any case that would be affected by the granting of the motion
22 before the court.
23

24 **~~(c)~~ (d) Findings and order**

25
26 If the court orders that the case or cases be transferred from another court, the order
27 ~~shall~~ must specify the reasons supporting a finding that the transfer will promote the
28 ends of justice, with reference to the following standards:
29

30 (1) The actions are not complex;

31
32 (2) Whether the common question of fact or law is predominating and significant
33 to the litigation;

34
35 (3) The convenience of the parties, witnesses, and counsel;

36
37 (4) The relative development of the actions and the work product of counsel;

38
39 (5) The efficient utilization of judicial facilities and staff resources;

40
41 (6) The calendar of the courts;
42

1 (7) The disadvantages of duplicative and inconsistent rulings, orders, or
2 judgments; and

3
4 (8) The likelihood of settlement of the actions without further litigation should
5 coordination be denied.

6
7 **(d) (e) Moving party to provide copies of order**

8
9 If the court orders that the case or cases be transferred from another court, the
10 moving party ~~shall forthwith provide copies of~~ must promptly serve the order ~~to~~ on
11 all parties to each case and ~~shall send copies it~~ to the Judicial Council and to the
12 presiding judge of a the court from which each case is to be transferred.

13
14 **(e) (f) Moving party to take necessary action to effectuate complete transfer and**
15 **consolidation**

16
17 If the court orders a case or cases transferred, the moving party ~~shall forthwith~~ must
18 promptly take all appropriate action necessary to assure that the transfer takes place
19 and that proceedings are initiated in the other court or courts to ~~effectuate~~ complete
20 consolidation with the case pending in that court.

21
22 **(f) (g) Conflicting orders**

23
24 The coordination staff in the Administrative Office of the Courts ~~shall~~ must review
25 all transfer orders submitted ~~pursuant to subdivision (e)~~ under (e) and ~~shall~~ must
26 promptly confer with the presiding judges of any courts that have issued conflicting
27 orders under Code of Civil Procedure section 403. The presiding judges of any such
28 courts ~~shall~~ must confer with each other and with the judges who have issued the
29 orders to the extent necessary to resolve the conflict. If it is determined that any
30 party to a case has failed to disclose information concerning pending motions, the
31 court may, after a duly noticed hearing, find that such party's failure to disclose is
32 an unlawful interference with the processes of the court.

33
34 **(g) (h) Alternative disposition of motion**

35
36 If after considering the motion the judge determines that the action or actions
37 pending in another court should not be transferred to the judge's court but instead
38 all the actions that are subject to the motion to transfer should be transferred and
39 consolidated in another court, the judge may order the parties to prepare, serve, and
40 file ~~initiate~~ a motion to have the actions transferred to the appropriate court.

41
42 **Chapter 7. Coordination of Complex Actions**
43

Article 1. General Provisions

Rule 3.501.1501. Definitions

As used in this chapter, unless the context or subject matter otherwise requires:

- (1) “Action” means any civil action or proceeding that is subject to coordination or that affects an action subject to coordination.
- (2) “Add-on case” means an action that is proposed for coordination, under Code of Civil Procedure section 404.4, with actions previously ordered coordinated.
- (3) “Assigned judge” means any judge assigned by the Chair of the Judicial Council or by a presiding judge authorized by the Chair of the Judicial Council to assign a judge under Code of Civil Procedure section 404 or 404.3, including a “coordination motion judge” and a “coordination trial judge.”
- (4) “Clerk,” unless otherwise indicated, means any person designated by an assigned judge to perform any clerical duties required by the rules in this chapter.
- (5) “Coordinated action” means any action that has been ordered coordinated with one or more other actions under chapter 3 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure and the rules in this chapter.
- (6) “Coordination attorney” means an attorney in the Administrative Office of the Courts appointed by the Chair of the Judicial Council to perform such administrative functions as may be appropriate under the rules in this chapter, including but not limited to the functions described in rules ~~4524~~ 3.524 and ~~4550~~ 3.550.
- (7) “Coordination motion judge” means an assigned judge designated under Code of Civil Procedure section 404 to determine whether coordination is appropriate.
- (8) “Coordination proceeding” means any procedure authorized by chapter 3 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure and by the rules in this chapter.
- (9) “Coordination trial judge” means an assigned judge designated under Code of Civil Procedure section 404.3 to hear and determine coordinated actions.
- (10) “Expenses” means all necessary costs that are reimbursable under Code of Civil Procedure section 404.8, including the compensation of the assigned judge and other necessary judicial officers and employees, the costs of any necessary travel

- 1 and subsistence determined under rules of the State Board of Control, and all
2 necessarily incurred costs of facilities, supplies, materials, and telephone and
3 mailing expenses.
4
- 5 (11) “Included action” means any action or proceeding included in a petition for
6 coordination.
7
- 8 (12) “Liaison counsel” means an attorney of record for a party to an included action or a
9 coordinated action who has been appointed by an assigned judge to serve as
10 representative of all parties on a side with the following powers and duties, as
11 appropriate:
12
- 13 (A) To receive on behalf of and promptly distribute to the parties for whom he or
14 she acts all notices and other documents from the court;
15
- 16 (B) To act as spokesperson for the side that he or she represents at all proceedings
17 set on notice before trial, subject to the right of each party to present individual
18 or divergent positions; and
19
- 20 (C) To call meetings of counsel for the purpose of proposing joint action.
21
- 22 (13) “Party” includes all parties to all included actions or coordinated actions, and the
23 word “party,” “petitioner,” or any other designation of a party includes that party’s
24 attorney of record. When a notice or other paper is required to be given or served on
25 a party, the notice or paper must be given to or served on the party’s attorney of
26 record, if any.
27
- 28 (14) “Petition for coordination” means any petition, motion, application, or request for
29 coordination of actions submitted to the Chair of the Judicial Council or to a
30 coordination trial judge under rule ~~1544~~ 3.544.
31
- 32 (15) “Remand” means to return a coordinated action or a severable claim or issue in a
33 coordinated action from a coordination proceeding to the court in which the action
34 was pending at the time the coordination of that action was ordered. If a remanded
35 action or claim had been transferred by the coordination trial judge under rule ~~1543~~
36 3.543 from the court in which the remanded action or claim was pending, the
37 remand must include the retransfer of that action or claim to that court.
38
- 39 (16) “Serve and file” means that a paper filed in a court must be accompanied by proof
40 of prior service of a copy of the paper on each party required to be served under the
41 rules in this chapter.
42

- (17) “Serve and submit” means that a paper to be submitted to an assigned judge under the rules in this chapter must be submitted to that judge at a designated court address. Every paper so submitted must be accompanied by proof of prior service on each party required to be served under the rules in this chapter. If there is no assigned judge or if the paper is of a type included in rule ~~1511(a)~~ 3.511(a), the paper must be submitted to the Chair of the Judicial Council.
- (18) “Side” means all parties to an included or a coordinated action who have a common or substantially similar interest in the issues, as determined by the assigned judge for the purpose of appointing liaison counsel or of allotting peremptory challenges in jury selection, or for any other appropriate purpose. Except as defined in rule ~~1515~~ 3.515, a side may include less than all plaintiffs or all defendants.
- (19) “Transfer” means to remove a coordinated action or severable claim in that action from the court in which it is pending to any other court under rule ~~1543~~ 3.543, without removing the action or claim from the coordination proceeding. “Transfer” includes “retransfer.”

Rule ~~3.502,1502.~~ Complex case—determination

The court must consider rule ~~1800~~ 3.400 et seq. in determining whether a case is or is not a complex case within the meaning of Code of Civil Procedure sections 403 and 404.

Rule ~~3.503,1503.~~ Requests for extensions of time or to shorten time

(a) Assigned judge may grant request

The assigned judge, on terms that are just, may shorten or extend the time within which any act is permitted or required to be done by a party. Unless otherwise ordered, any motion or application for an extension of time to perform an act required by these rules must be served and submitted in accordance with rule ~~1501(17)~~ 3.501(17).

(b) Stipulation requires consent of assigned judge

A stipulation for an extension of time for the filing and service of documents required by the rules in this chapter requires approval of the assigned judge.

(c) Extension does not extend time for bringing action to trial

Nothing in this rule extends the time within which a party must bring an action to trial under Code of Civil Procedure section 583.310.

Rule ~~3.504.1504.~~ General law applicable

(a) General law applicable

Except as otherwise provided in the rules in this chapter, all provisions of law applicable to civil actions generally apply to an action included in a coordination proceeding.

(b) Rules prevail over conflicting general provisions of law

To the extent that the rules in this chapter conflict with provisions of law applicable to civil actions generally, the rules in this chapter prevail, as provided by Code of Civil Procedure section 404.7.

(c) Manner of proceeding may be prescribed by assigned judge

If the manner of proceeding is not prescribed by chapter 3 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure or by the rules in this chapter, or if the prescribed manner of proceeding cannot, with reasonable diligence, be followed in a particular coordination proceeding, the assigned judge may prescribe any suitable manner of proceeding that appears most consistent with those statutes and rules.

(d) Specification of applicable local rules

At the beginning of a coordination proceeding, the assigned judge must specify, subject to rule ~~984.1~~ 3.20, any local court rules to be followed in that proceeding, and thereafter all parties must comply with those rules. Except as otherwise provided in the rules in this chapter or as directed by the assigned judge, the local rules of the court designated in the order appointing the assigned judge apply in all respects if they would otherwise apply without reference to the rules in this chapter.

Rule ~~3.505.1505.~~ Appellate review

(a) Coordination order to specify reviewing court

If the actions to be coordinated are within the jurisdiction of more than one reviewing court, the coordination motion judge must select and the order granting a petition for coordination must specify, in accordance with Code of Civil Procedure section 404.2, the court having appellate jurisdiction of the coordinated actions.

(b) Court for review of order granting or denying coordination

1 A petition for a writ relating to an order granting or denying coordination may be
2 filed, subject to the provisions of rule 47.1, in any reviewing court having
3 jurisdiction under the rules applicable to civil actions generally.
4

5 **Rule 3.506.1506. Liaison counsel**

6
7 **(a) Selection and appointment**
8

9 An assigned judge may at any time request that the parties on each side of the
10 included or coordinated actions select one or more of the attorneys of record on that
11 side for appointment as liaison counsel, and may appoint liaison counsel if the
12 parties are unable to agree.
13

14 **(b) Duration of appointment by coordination motion judge**
15

16 Unless otherwise stipulated to or directed by an assigned judge, the appointment of
17 a liaison counsel by a coordination motion judge terminates on the final
18 determination of the issue whether coordination is appropriate. For good cause
19 shown, the coordination motion judge, on the court's own motion or on the motion
20 of any party, may remove previously appointed counsel as liaison counsel.
21

22 **(c) Service on party that has requested special notice**
23

24 Except as otherwise directed by the assigned judge, any party who has made a
25 written request for special notice must be served with a copy of any document
26 thereafter served on the party's liaison counsel.
27

28 **Article 2. Procedural Rules Applicable to All Procedures for Complex Coordination**
29 **Proceedings**
30

31 **Rule 3.510.1510. Service of papers**
32

33 **(a) Proof of service**
34

35 Except as otherwise provided in the rules in this chapter, all papers filed or
36 submitted must be accompanied by proof of prior service on all other parties to the
37 coordination proceeding, including all parties appearing in all included actions and
38 coordinated actions. Service and proof of such service must be made as provided for
39 in civil actions generally.
40

41 **(b) Service on liaison counsel**
42

1 Except as provided in rule ~~1506(b)~~ 3.506(c), any party for whom liaison counsel has
2 been designated may be served by serving the liaison counsel.

3
4 **(c) Effect of failure to serve**

5
6 Failure to serve any defendant with a copy of the summons and of the complaint, or
7 failure to serve any party with any other paper or order as required by the rules in
8 this chapter, will not preclude the coordination of the actions, but the unserved
9 defendant or party may assert the failure to serve as a basis for appropriate relief.

10
11 **Rule 3.511.1511. Papers to be submitted to Chair of the Judicial Council**

12
13 **(a) Types of papers**

14
15 A copy of the following papers must be submitted to the Chair of the Judicial
16 Council at the Judicial Council's San Francisco office:

- 17
18 (1) Petition for coordination, including a petition for coordination of add-on
19 cases;
20
21 (2) Notice of submission of petition for coordination, along with the caption page
22 of the original action;
23
24 (3) Order assigning coordination motion judge, if made by a presiding judge;
25
26 (4) Order assigning coordination trial judge, if made by a presiding judge;
27
28 (5) Notice of opposition;
29
30 (6) Response in opposition to or in support of a petition for coordination;
31
32 (7) Motion for a stay order;
33
34 (8) Notice of hearing on petition;
35
36 (9) Order granting or denying coordination, including coordination of add-on
37 cases;
38
39 (10) Order of remand;
40
41 (11) Order of transfer;
42
43 (12) Order terminating a coordination proceeding in whole or in part;

1
2 (13) Order dismissing an included or coordinated action;

3
4 (14) Notice of appeal; and

5
6 (15) Notice of disposition of appeal.

7
8 **(b) Obligation of party**

9
10 The papers listed in (a) are to be submitted by the party that filed or submitted and
11 served the papers or that was directed to give notice of entry of the order. Notice of
12 submission must be filed with the court as part of the proof of service.

13
14 **Rule ~~3.512, 1511.5~~ 3.512.5. Electronic submission of documents to Chair of Judicial Council**

15
16 **(a) Documents that may be submitted electronically**

17
18 Any paper listed in rule 1511(a) may be submitted electronically to
19 coordination@jud.ca.gov.

20
21 **(b) Responsibilities of party submitting documents electronically**

22
23 A party submitting a document electronically must:

- 24
25 (1) Take all reasonable steps to ensure that the submission does not contain
26 computer code, including viruses, that might be harmful to the Judicial
27 Council's electronic system and to other users of that system; and
28
29 (2) Furnish one or more electronic notification addresses and immediately provide
30 any change to his or her electronic notification addresses.

31
32 **(c) Format of documents to be submitted electronically**

33
34 A document that is submitted electronically must meet the following requirements:

- 35
36 (1) The software for creating and reading the document must be in the public
37 domain or generally available at a reasonable cost; and
38
39 (2) The printing of documents must not result in the loss of document text,
40 format, or appearance.

41
42 **(d) Signature on documents under penalty of perjury**

- 1 (1) When a document to be submitted electronically requires a signature under
2 penalty of perjury, the document is deemed signed by the declarant if, before
3 submission, the declarant has signed a printed form of the document.
4
- 5 (2) By electronically submitting the document, the party submitting it indicates
6 that he or she has complied with subdivision (d)(1) of this rule and that the
7 original, signed document is available for review and copying at the request of
8 the court or any party.
9
- 10 (3) At any time after the document is submitted, any other party may serve a
11 demand for production of the original signed document. The demand must be
12 served on all other parties but need not be filed with the court.
13
- 14 (4) Within five days of service of the demand, the party on whom the demand is
15 made must make the original signed document available for review and
16 copying by all other parties.
17
- 18 **(e) Signature on documents not under penalty of perjury**
19
- 20 If a document does not require a signature under penalty of perjury, the document is
21 deemed signed by the party if the document is submitted electronically.
22
- 23 **(f) Digital signature**
24
- 25 A party is not required to use a digital signature on an electronically submitted
26 document.
27

28 **Rule 3.513.1512. Service of memorandums and declarations**
29

30 Unless otherwise provided in the rules in this chapter or directed by the assigned judge,
31 all memorandums and declarations in support of or opposition to any petition, motion, or
32 application must be served and submitted at least nine ~~calendar~~ court days before any
33 hearing on the matter at issue.
34

35 **Rule 3.514.1513. Evidence presented at court hearings**
36

37 All factual matters to be heard on any petition for coordination, or on any other petition,
38 motion, or application under the rules in this chapter, must be initially presented and
39 heard on declarations, answers to interrogatories or requests for admissions, depositions,
40 or matters judicially noticed. Oral testimony will not be permitted at a hearing except as
41 the assigned judge may permit to resolve factual issues shown by the declarations,
42 responses to discovery, or matters judicially noticed to be in dispute. Only parties that
43 have submitted a petition or motion, or a written response or opposition to a petition or

1 motion, will be permitted to appear at the hearing, except the assigned judge may permit
2 other parties to appear, on a showing of good cause.

3
4 **Rule ~~3.515.1514~~ 3.515.1514. Motions and orders for a stay**

5
6 **(a) Motion for stay**

7
8 Any party may file a motion for an order under Code of Civil Procedure section
9 404.5 staying the proceedings in any action being considered for, or affecting an
10 action being considered for, coordination, or the court may stay the proceedings on
11 its own motion. The motion for a stay may be included with a petition for
12 coordination or may be served and submitted to the Chair of the Judicial Council
13 and the coordination motion judge by any party at any time prior to the
14 determination of the petition.

15
16 **(b) Contents of motion**

17
18 A motion for a stay order must:

- 19
20 (1) List all known pending related cases;
21
22 (2) State whether the stay order should extend to any such related case; and
23
24 (3) Be supported by a memorandum and by declarations establishing the facts
25 relied on to show that a stay order is necessary and appropriate to effectuate
26 the purposes of coordination.

27
28 **(c) Service requirements for certain motions for stay orders**

29
30 If the action to be stayed is not included in the petition for coordination or any
31 response to that petition, the motion for a stay order and all supporting documents
32 must be served on each party to the action to be stayed and any such party may
33 serve and submit opposition to the motion for a stay order.

34
35 **(d) Opposition to motion for stay order**

36
37 Any memorandums and declarations in opposition to a motion for a stay order must
38 be served and submitted within 10 days after service of the motion.

39
40 **(e) Hearing on motion for stay order**

41
42 A stay order may be issued with or without a hearing. A party filing a motion for a
43 stay order or opposition thereto may request a hearing to determine whether the stay

1 order should be granted. A request for hearing should be made at the time the
2 requesting party files the motion or opposition. If the coordination motion judge
3 grants the request for a hearing, the requesting party must provide notice.
4

5 **(f) Determination of motion for stay order**
6

7 In ruling on a motion for a stay order, the assigned judge must determine whether
8 the stay will promote the ends of justice, considering the imminence of any trial or
9 other proceeding that might materially affect the status of the action to be stayed,
10 and whether a final judgment in that action would have a res judicata or collateral
11 estoppel effect with regard to any common issue of the included actions.
12

13 **(g) Issuance of stay order and termination of stay**
14

15 If a stay order is issued, the party that requested the stay must serve and file a copy
16 of the order in each included action that is stayed. Thirty or more days following
17 issuance of the stay order, any party that is subject to the stay order may move to
18 terminate the stay.
19

20 **(h) Effect of stay order**
21

22 Unless otherwise specified in the order, a stay order suspends all proceedings in the
23 action to which it applies. A stay order may be limited by its terms to specified
24 proceedings, orders, motions, or other phases of the action to which the order
25 applies.
26

27 **(i) Effect of absence of stay order**
28

29 In the absence of a stay order, a court receiving an order assigning a coordination
30 motion judge may continue to exercise jurisdiction over the included action for
31 purposes of all pretrial and discovery proceedings, but no trial may be commenced
32 and no judgment may be entered in that action unless trial of the action had
33 commenced before the assignment of the coordination motion judge.
34

35 **(j) Effect of stay order on dismissal for lack of prosecution**
36

37 The time during which any stay of proceedings is in effect under the rules in this
38 chapter must not be included in determining whether the action stayed should be
39 dismissed for lack of prosecution under chapter 1.5 (§ 583.110 et seq.) of title 8 of
40 part 2 of the Code of Civil Procedure.
41

42 **Rule ~~3.516.1515~~ Motions under Code of Civil Procedure section 170.6**
43

1 A party making a peremptory challenge by motion or affidavit of prejudice regarding an
2 assigned judge must submit it in writing to the assigned judge within 20 days after
3 service of the order assigning the judge to the coordination proceeding. All plaintiffs or
4 similar parties in the included or coordinated actions constitute a side and all defendants
5 or similar parties in such actions constitute a side for purposes of applying Code of Civil
6 Procedure section 170.6.

7 8 **Article 3. Petitions and Proceedings for Coordination of Complex Actions**

9 10 **Rule ~~3.520.1520.~~ Motions filed in the trial court**

11 12 **(a) General requirements**

13
14 A motion filed in the trial court under this rule must specify the matters required by
15 rule ~~4521(a)~~ 3.521(a) and must be made in the manner provided by law for motions
16 in civil actions generally.

17 18 **(b) Permission to submit a petition for coordination**

19 20 **(1) *Request for permission to submit coordination petition***

21
22 If a direct petition is not authorized by Code of Civil Procedure section 404, a
23 party may request permission from the presiding judge of the court in which
24 one of the included actions is pending to submit a petition for coordination to
25 the Chair of the Judicial Council. The request must be made by noticed motion
26 accompanied by a proposed order. The proposed order must state that the
27 moving party has permission to submit a petition for coordination to the Chair
28 of the Judicial Council under rules ~~4521–4523~~ 3.521–3.523.

29 30 **(2) *Order to be prepared***

31
32 If permission to submit a petition is granted, the moving party must serve and
33 file the signed order and submit it to the Chair of the Judicial Council.

34 35 **(3) *Stay permitted pending preparation of petition***

36
37 To provide sufficient time for a party to submit a petition, the presiding judge
38 may stay all related actions pending in that court for a reasonable time not to
39 exceed 30 court or calendar days.

40 41 **Rule ~~3.521.1521.~~ Petition for coordination**

1 **(a) Contents of petition**

2
3 A request submitted to the Chair of the Judicial Council for the assignment of a
4 judge to determine whether the coordination of certain actions is appropriate, or a
5 request that a coordination trial judge make such a determination concerning an
6 add-on case, must be designated a “Petition for Coordination” and may be made at
7 any time after filing of the complaint. The petition must state whether a hearing is
8 requested and must be supported by a memorandum and declarations showing:

- 9
10 (1) The name of each petitioner or, when the petition is submitted by a presiding
11 or sole judge, the name of each real party in interest, and the name and address
12 of each party’s attorney of record, if any;
13
14 (2) The names of the parties to all included actions, and the name and address of
15 each party’s attorney of record, if any;
16
17 (3) If the party seeking to submit a petition for coordination is a plaintiff, whether
18 the party’s attorney has served the summons and complaint on all parties in all
19 included actions in which the attorney has appeared;
20
21 (4) For each included action, the complete title and case number, the date the
22 complaint was filed, and the title of the court in which the action is pending;
23
24 (5) The complete title and case number of any other action known to the
25 petitioner to be pending in a court of this state that shares a common question
26 of fact or law with the included actions, and a statement of the reasons for not
27 including the other action in the petition for coordination or a statement that
28 the petitioner knows of no other actions sharing a common question of fact or
29 law;
30
31 (6) The status of each included action, including the status of any pretrial or
32 discovery motions or orders in that action, if known to petitioner;
33
34 (7) The facts relied on to show that each included action meets the coordination
35 standards specified in Code of Civil Procedure section 404.1 ; and
36
37 (8) The facts relied on in support of a request that a particular site or sites be
38 selected for a hearing on the petition for coordination.

39
40 **(b) Submit proof of filing and service**

41
42 Within five calendar days of submitting the petition for coordination, the petitioner
43 must submit to the Chair of the Judicial Council proof of filing of the notice of

1 submission of petition required by rule ~~1522~~ 3.522, and proof of service of the
2 notice of submission of petition and of the petition required by rule ~~1523~~ 3.523.

3
4 **(c) Copies of pleadings in lieu of proof by declaration**

5
6 In lieu of proof by declaration of any fact required by (a)(2), (4), (7), and (8), a
7 certified or endorsed copy of the respective pleadings may be attached to the
8 petition for coordination, provided that the petitioner specifies with particularity the
9 portions of the pleadings that are relied on to show the fact.

10 *(Subd (c) amended effective January 1, 2005.)*
11

12 **(d) Effect of imminent trial date**

13
14 The imminence of a trial in any action otherwise appropriate for coordination may
15 be a ground for summary denial of a petition for coordination, in whole or in part.
16

17 **Rule ~~3.522,1522~~. Notice of submission of petition for coordination**

18
19 **(a) Contents of notice of submission**

20
21 In each included action, the petitioner must file a “Notice of Submission of Petition
22 for Coordination” and the petition for coordination. Each notice must bear the title
23 of the court in which the notice is to be filed and the title and case number of each
24 included action that is pending in that court. Each notice must include:
25

26 (1) The date that the petition for coordination was submitted to the Chair of the
27 Judicial Council;

28
29 (2) The name and address of the petitioner’s attorney of record;
30

31 (3) The title and case number of each included action to which the petitioner is a
32 party and the title of the court in which each action is pending; and
33

34 (4) The statement that any written opposition to the petition must be submitted
35 and served at least nine calendar days before the hearing date.
36

37 **(b) Copies of notice**

38
39 The petitioner must submit the notice and proof of filing in each included action to
40 the Chair of the Judicial Council within five calendar days of submitting the petition
41 for coordination.
42

Rule ~~3.523.1523~~. Service of notice of submission on party

The petitioner must serve the notice of submission of petition for coordination that was filed in each included action, the petition for coordination, and supporting documents on each party appearing in each included action and submit the notice to the Chair of the Judicial Council within five calendar days of submitting the petition for coordination.

Rule ~~3.524.1524~~. Order assigning coordination motion judge

(a) Contents of order

An order by the Chair of the Judicial Council assigning a coordination motion judge to determine whether coordination is appropriate, or authorizing the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases, must include the following:

- (1) The special title and number assigned to the coordination proceeding; and
- (2) The court address for submitting all subsequent documents to be considered by the coordination motion judge.

(b) Service of order

The petitioner must serve the order described in (a) on each party appearing in an included action and send it to each court in which an included action is pending with directions to the clerk to file the order in the included action.

Rule ~~3.525.1525~~. Response in opposition to petition for coordination

Any party to an included action that opposes coordination may serve and submit a memorandum and declarations in opposition to the petition. Any response in opposition must be served and filed at least nine ~~calendar~~ court days before the date set for hearing.

Rule ~~3.526.1526~~. Response in support of petition for coordination

Any party to an included action that supports coordination may serve and submit a written statement in support of the petition. Any response in support must be served and filed at least nine ~~calendar~~ court days before the date set for hearing. If a party that supports coordination does not support the particular site or sites requested by the petitioner for the hearing on the petition for coordination, that party may request that a different site or sites be selected and include in his or her response the facts relied on in support thereof.

1
2 **Rule 3.527.1527. Notice of hearing on petition for coordination**

3
4 **(a) Timing and notice of hearing**

5
6 The coordination motion judge must set a hearing date on a petition for
7 coordination within 30 days of the date of the order assigning the coordination
8 motion judge. When a coordination motion judge is assigned to decide a petition for
9 coordination that lists additional included actions sharing a common question of law
10 or fact with included actions in a petition for coordination already pending before
11 the judge, the judge may continue the hearing date on the first petition no more than
12 30 calendar days in order to hear both petitions at the same time. The petitioner
13 must provide notice of the hearing to each party appearing in an included action. If
14 the coordination motion judge determines that a party that should be served with
15 notice of the petition for coordination has not been served with notice, the
16 coordination motion judge must order the petitioner to promptly serve that party. If
17 the coordination motion judge determines that a hearing is not required under (b),
18 the hearing date must be vacated and notice provided to the parties.
19

20 **(b) Circumstances in which hearing required**

21
22 A hearing must be held to decide a petition for coordination if a party opposes
23 coordination. A petition for coordination may not be denied unless a hearing has
24 been held.
25

26 **(c) Report to the Chair of the Judicial Council**

27
28 If the petition for coordination has not been decided within 30 calendar days after
29 the hearing, the coordination motion judge must promptly submit to the Chair of the
30 Judicial Council a written report describing:

- 31
32 (1) The present status of the petition for coordination proceeding;
33
34 (2) Any factors or circumstances that may have caused undue or unanticipated
35 delay in the decision on the petition for coordination; and
36
37 (3) Any stay orders that are in effect.
38

39 **Rule 3.528.1528. Separate hearing on certain coordination issues**

40
41 When a petition for coordination may be disposed of on the determination of a specified
42 issue or issues, without a hearing on all issues raised by the petition and any opposition ,

1 the assigned judge may order that the specified issue or issues be heard and determined
2 before a hearing on the remaining issues.

3
4 **Rule ~~3.529.1529~~. Order granting or denying coordination**

5
6 **(a) Filing, service, and submittal**

7
8 When a petition for coordination is granted or denied, the petitioner must promptly
9 file the order in each included action, serve it on each party appearing in an
10 included action, and submit it to the Chair of Judicial Council.

11
12 **(b) Stay of further proceedings**

13
14 When an order granting coordination is filed in an included action, all further
15 proceedings in that action are automatically stayed, except as directed by the
16 coordination trial judge or by the coordination motion judge under (c). The stay
17 does not preclude the court in which the included action is pending from accepting
18 and filing papers with proof of submission of a copy to the assigned judge or from
19 exercising jurisdiction over any severable claim that has not been ordered
20 coordinated.

21
22 **(c) Authority of coordination motion judge pending assignment of coordination**
23 **trial judge**

24
25 After a petition for coordination has been granted and before a coordination trial
26 judge has been assigned, the coordination motion judge may for good cause make
27 any appropriate order as the ends of justice may require but may not commence a
28 trial or enter judgment in any included action. Good cause includes a showing of an
29 urgent need for judicial action to preserve the rights of a party pending assignment
30 of a coordination trial judge.

31
32 **(d) Order denying coordination**

33
34 The authority of a coordination motion judge over an included action terminates
35 when an order denying a petition for coordination is filed in the included action and
36 served on the parties to the action. A stay ordered by the coordination motion judge
37 terminates 10 days after the order denying coordination is filed.

38
39 **Rule ~~3.530.1530~~. Site of coordination proceedings**

40
41 **(a) Recommendation by coordination motion judge**
42

1 If a petition for coordination is granted, the coordination motion judge must, in the
2 order granting coordination, recommend to the Chair of the Judicial Council a
3 particular superior court for the site of the coordination proceedings.
4

5 **(b) Factors to consider**
6

7 The coordination motion judge may consider any relevant factors in making a
8 recommendation for the site of the coordination proceedings, including the
9 following:
10

- 11 (1) The number of included actions in particular locations;
- 12
- 13 (2) Whether the litigation is at an advanced stage in a particular court;
- 14
- 15 (3) The efficient use of court facilities and judicial resources;
- 16
- 17 (4) The locations of witnesses and evidence;
- 18
- 19 (5) The convenience of the parties and witnesses;
- 20
- 21 (6) The parties' principal places of business;
- 22
- 23 (7) The office locations of counsel for the parties; and
- 24
- 25 (8) The ease of travel to and availability of accommodations in particular
26 locations.
- 27

28 **Rule ~~3.531.1531~~ 3.531. Potential add-on case**
29

30 **(a) Notice**
31

32 Any party to an included action in a pending petition for coordination must
33 promptly provide notice of any potential add-on cases in which that party is also
34 named or in which that party's attorney has appeared. The party must submit notice
35 to the coordination motion judge and the Chair of the Judicial Council and serve it
36 on each party appearing in the included actions in the pending petition and each
37 party appearing in the potential add-on cases.
38

39 **(b) Stipulation or order**
40

41 By stipulation of all parties or order of the coordination motion judge, each
42 potential add-on case will be deemed an included action for purposes of the hearing
43 on the petition for coordination.

Rule ~~3.532,1532.~~ Petition for coordination when cases already ordered coordinated

(a) Assignment of coordination trial judge

If it appears that included actions in a petition for coordination share a common question of law or fact with cases already ordered coordinated, the Chair of the Judicial Council may assign the petition to the coordination trial judge for the existing coordinated cases to decide the petition as a request to coordinate an add-on case under rule ~~1544~~ 3.544.

(b) Order

The coordination trial judge's order must specify that the request to coordinate an add-on case is either granted or denied.

(c) Filing and service

The petitioner must promptly file the order in each included action, serve it on each party appearing in an included action, and submit a copy to the Chair of the Judicial Council.

(d) Cases added on and right to peremptory challenge

If the coordination trial judge grants the petition, the included actions will be coordinated as add-on cases and the right to file a peremptory challenge under Code of Civil Procedure section 170.6 will be limited by rule ~~1515~~ 3.515.

(e) Assignment of coordination motion judge if cases not added on

If the coordination trial judge denies the petition as a request to coordinate an add-on case under rule ~~1544~~ 3.544, the Chair of the Judicial Council must assign a coordination motion judge to determine whether coordination is appropriate under rule 1524.

Article 4. Pretrial and Trial Rules for Complex Coordinated Actions

Rule ~~3.540,1540.~~ Order assigning coordination trial judge

(a) Assignment by the Chair of the Judicial Council

When a petition for coordination is granted, the Chair of the Judicial Council must either assign a coordination trial judge to hear and determine the coordinated

actions or authorize the presiding judge of a court to assign the matter to judicial officers of the court in the same manner as assignments are made in other civil cases, under Code of Civil Procedure section 404.3 . The order assigning a coordination trial judge must designate an address for submission of papers to that judge.

(b) Powers of coordination trial judge

Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action that are available to a judge of the court in which that action is pending.

(c) Filing and service of copies of assignment order

The petitioner must file the assignment order in each coordinated action and serve it on each party appearing in each action. Every paper filed in a coordinated action must be accompanied by proof of submission of a copy of the paper to the coordination trial judge at the designated address. A copy of the assignment order must be included in any subsequent service of process on any defendant in the action.

Rule ~~3.541~~1541. Duties of the coordination trial judge

(a) Initial case management conference

The coordination trial judge must hold a case management conference within 45 days after issuance of the assignment order . Counsel and all self-represented persons must attend the conference and be prepared to discuss all matters specified in the order setting the conference. At any time following the assignment of the coordination trial judge, a party may serve and submit a proposed agenda for the conference and a proposed form of order covering such matters of procedure and discovery as may be appropriate. At the conference, the judge may:

- (1) Appoint liaison counsel under rule ~~1506~~ 3.506;
- (2) Establish a timetable for filing motions other than discovery motions;
- (3) Establish a schedule for discovery;
- (4) Provide a method and schedule for the submission of preliminary legal questions that might serve to expedite the disposition of the coordinated actions;

- (5) In class actions, establish a schedule, if practicable, for the prompt determination of matters pertinent to the class action issue;
- (6) Establish a central depository or depositories to receive and maintain for inspection by the parties evidentiary material and specified documents that are not required by the rules in this chapter to be served on all parties; and
- (7) Schedule further conferences if appropriate.

(b) Management of proceedings by coordination trial judge

The coordination trial judge must assume an active role in managing all steps of the pretrial, discovery, and trial proceedings to expedite the just determination of the coordinated actions without delay. The judge may, for the purpose of coordination and to serve the ends of justice:

- (1) Order any coordinated action transferred to another court under rule ~~1543~~ 3.543;
- (2) Schedule and conduct hearings, conferences, and a trial or trials at any site within this state that the judge deems appropriate with due consideration to the convenience of parties, witnesses, and counsel; to the relative development of the actions and the work product of counsel; to the efficient utilization of judicial facilities and resources; and to the calendar of the courts; and
- (3) Order any issue or defense to be tried separately and before trial of the remaining issues when it appears that the disposition of any of the coordinated actions might thereby be expedited.

Rule ~~3.542, 1542~~. Remand of action or claim

The coordination trial judge may at any time remand a coordinated action or any severable claim or issue in that action to the court in which the action was pending at the time the coordination of that action was ordered. Remand may be made on the stipulation of all parties or on the basis of evidence received at a hearing on the court's own motion or on the motion of any party to any coordinated action. No action or severable claim or issue in that action may be remanded over the objection of any party unless the evidence demonstrates a material change in the circumstances that are relevant to the criteria for coordination under Code of Civil Procedure section 404.1. If the order of remand requires that the action be transferred, the provisions of rule ~~1543(b)~~ 3.543(c)–(e) are applicable to the transfer. A remanded action is no longer part of the coordination proceedings for purposes of the rules in this chapter.

1 **Rule ~~3.543.1543~~ 3.543. Transfer of action or claim**

2
3 **(a) Court may transfer coordinated action**

4
5 The coordination trial judge may order any coordinated action or severable claim in
6 that action transferred from the court in which it is pending to another court for a
7 specified purpose or for all purposes. Transfer may be made by the court on its own
8 motion or on the motion of any party to any coordinated action.
9

10 **(b) Hearing on motion to transfer**

11
12 If a party objects to the transfer, the court must hold a hearing on at least 10 days'
13 written notice served on all parties to that action. At any hearing to determine
14 whether an action or claim should be transferred, the court must consider the
15 convenience of parties, witnesses, and counsel; the relative development of the
16 actions and the work product of counsel; the efficient utilization of judicial facilities
17 and resources; the calendar of the courts; and any other relevant matter.
18

19 **(c) Order transferring action**

20
21 The order transferring the action or claim must designate the court to which the
22 action is transferred and must direct that a copy of the order of transfer be filed in
23 each coordinated action. The order must indicate whether the action remains part of
24 the coordination proceedings for purposes of the rules in this chapter.
25

26 **(d) Duties of transferor and transferee courts**

27
28 **(1) *Duty of transferor court***

29
30 The clerk of the court in which the action was pending must immediately
31 prepare and transmit to the court to which the action is transferred a certified
32 copy of the order of transfer and of the pleadings and proceedings in the
33 transferred action and must serve a copy of the order of transfer on each party
34 appearing in that action.
35

36 **(2) *Duty of transferee court***

37
38 The court to which the action is transferred must file the action as if the action
39 had been commenced in that court. No fees may be required for such transfer
40 by either court.
41

42 **(3) *Transmission of papers***

1 If it is necessary to have any of the original pleadings or other papers in the
2 transferred action before the coordination trial judge, the clerk of the court
3 from which the action was transferred must, upon written request of a party to
4 that action or of the coordination trial judge, transmit such papers or pleadings
5 to the court to which the action is transferred and must retain a certified copy .
6

7 **(e) Transferee court to exercise jurisdiction**
8

9 On receipt of a transfer order, the court to which the action is transferred may
10 exercise jurisdiction over the action in accordance with the orders and directions of
11 the coordination trial judge, and no other court may exercise jurisdiction over that
12 action except as provided in this rule.
13

14 **Rule ~~3.544~~1544. Add-on cases**
15

16 **(a) Request to coordinate add-on case**
17

18 A request to coordinate an add-on case must comply with the requirements of rules
19 ~~1520~~ 3.520 through ~~1523~~ 3.523, except that the request must be submitted to the
20 coordination trial judge under Code of Civil Procedure section 404.4 ~~of the Code of~~
21 ~~Civil Procedure~~, with proof of mailing of one copy to the Chair of the Judicial
22 Council and proof of service as required by rule ~~1510~~ 3.510.
23

24 **(b) Opposition to request to coordinate an add-on case**
25

26 Within 10 days after the service of a request, any party may serve and submit a
27 notice of opposition to the request. Thereafter, within 15 days after submitting a
28 notice of opposition, the party must serve and submit a memorandum and
29 declarations in opposition to the request. Failure to serve and submit a
30 memorandum and declarations in opposition may be a ground for granting the
31 request to coordinate an add-on case.
32

33 **(c) Hearing on request to coordinate an add-on case**
34

35 The coordination trial judge may order a hearing on a request to coordinate an add-
36 on case under rules ~~1527~~ 3.527 and ~~1528~~ 3.528 and may allow the parties to serve
37 and submit additional written materials in support of or opposition to the request. In
38 deciding the request to coordinate, the court must consider the relative development
39 of the actions and the work product of counsel, in addition to any other relevant
40 matter. An application for an order staying the add-on case must be made to the
41 coordination trial judge under rule ~~1514~~ 3.514.
42

1 **(d) Order on request to coordinate an add-on case**

2
3 If no party has filed a notice of opposition within the time required under (b), the
4 coordination trial judge may enter an order granting or denying the request without
5 a hearing. An order granting or denying a request to coordinate an add-on case must
6 be prepared and served under rule ~~4529~~ 3.529, and an order granting such request
7 automatically stays all further proceedings in the add-on case under rule ~~4529~~
8 3.529.
9

10 **Rule ~~3.545~~1545. Termination of coordinated action**

11
12 **(a) Coordination trial judge may terminate action**

13
14 The coordination trial judge may terminate any coordinated action by settlement or
15 final dismissal, summary judgment, or judgment, or may transfer the action so that
16 it may be dismissed or otherwise terminated in the court where it was pending when
17 coordination was ordered.
18

19 **(b) Copies of order dismissing or terminating action and judgment**

20
21 A certified copy of the order dismissing or terminating the action and of any
22 judgment must be transmitted to:
23

- 24 (1) The clerk of the court in which the action was pending when coordination was
25 ordered, who shall promptly enter any judgment and serve notice of entry of
26 the judgment on all parties to the action and on the Chair of the Judicial
27 Council; and
28
29 (2) The appropriate clerks for filing in each pending coordinated action.
30

31 **(c) Judgment in coordinated action**

32
33 The judgment entered in each coordinated action must bear the title and case
34 number assigned to the action at the time it was filed.
35

36 **(d) Proceedings in trial court after judgment**

37
38 Until the judgment in a coordinated action becomes final or until a coordinated
39 action is remanded, all further proceedings in that action to be determined by the
40 trial court must be determined by the coordination trial judge. Thereafter, unless
41 otherwise ordered by the coordination trial judge, all such proceedings must be
42 conducted in the court where the action was pending when coordination was
43 ordered. The coordination trial judge must also specify the court in which any

ancillary proceedings will be heard and determined. For purposes of this rule, a judgment is final when it is no longer subject to appeal.

Article 5. Administration of Coordinated Complex Actions

Rule ~~3.550.550~~. General administration by the Administrative Office of the Courts

(a) Coordination attorney

Except as otherwise provided in the rules in this chapter, all necessary administrative functions under this ~~division~~ chapter will be performed at the direction of the Chair of the Judicial Council by a coordination attorney in the Administrative Office of the Courts.

(b) Duties of coordination attorney

The coordination attorney must at all times maintain:

- (1) A list of active and retired judges who are qualified and currently available to conduct coordination proceedings; and
- (2) A register of all coordination proceedings and a file for each proceeding, for public inspection during regular business hours at the San Francisco office of the Judicial Council .

(c) Coordination proceeding title and case number

The coordination attorney must assign each coordination proceeding a special title and coordination proceeding number. Thereafter all papers in that proceeding must bear that title and number.

Division 5. Venue [Reserved]

Division 6. Proceedings

Chapter 1. General Provisions [Reserved]

Chapter 2. Stay of Proceedings

Rule ~~3.650.224~~. Duty to notify court and others of stay

(a) Notice of stay

1 The party who requested or caused a stay of a proceeding must immediately serve
2 and file a notice of the stay and attach a copy of the order or other document
3 showing that the proceeding is stayed. If the person who requested or caused the
4 stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff
5 must immediately file a notice of the stay and attach a copy of the order or other
6 document showing that the proceeding is stayed. The notice of stay must be served
7 on all parties who have appeared in the case.
8

9 **(b) When notice must be provided**

10
11 The party responsible for giving notice under (a) must provide notice if the case is
12 stayed for any of the following reasons:
13

- 14 (1) An order of a federal court or a higher state court;
15
16 (2) Contractual arbitration under Code of Civil Procedure section 1281.4 ~~of the~~
17 ~~Code of Civil Procedure~~;
18
19 (3) Arbitration of attorney fees and costs under Business and Professions Code
20 section 6201 ~~of the Business and Professions Code~~; or
21
22 (4) Automatic stay caused by a filing in another court, including a federal
23 bankruptcy court.
24

25 **(c) Contents of notice**

26
27 The notice must state whether the case is stayed with regard to all parties or only
28 certain parties. If it is stayed with regard to only certain parties, the notice must
29 specifically identify those parties. The notice must also state the reason that the case
30 is stayed.
31

32 **(d) Notice that stay is terminated or modified**

33
34 When a stay is vacated, is no longer in effect, or is modified, the party who filed the
35 notice of the stay must immediately serve and file a notice of termination or
36 modification of stay. If that party fails to do so, any other party in the action who
37 has knowledge of the termination or modification of the stay must serve and file a
38 notice of termination or modification of stay. Once one party in the action has
39 served and filed a notice of termination or modification of stay, other parties in the
40 action are not required to do so.
41

Chapter 3. Hearings and Conferences

Rule ~~3.670.298~~. Telephone appearance

(a) Application

This rule applies to all general civil cases as defined in rule ~~200.1(2)~~ 1.6 and to unlawful detainer and probate proceedings.

(b) General provision

Except as provided in (c), a party may appear by telephone in any conference or hearing, at which witnesses are not expected to be called to testify.

(c) Exceptions

A personal appearance is required for the following:

- (1) Settlement conferences, unless the court orders otherwise;
- (2) Case management conferences, unless the court permits telephone appearances at those conferences; and
- (3) Any hearing or conference for which the court, in its discretion, determines that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case. The court must make this determination on a case-by-case basis.

(d) Notice by party

- (1) A party choosing to appear by telephone at a hearing under this rule must either:
 - (A) Place the phrase “Telephone Appearance” below the title of the moving or opposing papers; or
 - (B) At least five court days before the appearance, notify the court and all other parties of the party’s intent to appear by telephone. If the notice is oral, it must be given either in person or by telephone. If the notice is in writing, it must be given by filing a “Notice of Intent to Appear by Telephone” with the court at least five court days before the hearing and by serving the notice at the same time on all other parties by personal delivery, ~~facsimile~~ fax transmission, express mail, or other means

1 reasonably calculated to ensure delivery to the parties no later than the
2 close of the next business day.

- 3
4 (2) If a party that has given notice that it intends to appear by telephone
5 subsequently chooses to appear in person, the party must so notify the court
6 and all other parties that have appeared in the action, by telephone, at least two
7 court days before the hearing.
8

9 **(e) Notice by court**

10
11 After a party has requested a telephone appearance under (d), if the court requires
12 the personal appearance of the party, the court must notify all parties by telephone
13 at least one court day before the hearing. In courts using a telephonic tentative
14 ruling system for law and motion matters, court notification that parties must appear
15 in person may be given as part of the court's tentative ruling on a specific law and
16 motion matter if that notification is given one court day before the hearing.
17

18 **(f) Private vendor; charges for service**

19
20 A court may provide teleconferencing for court appearances by entering into a
21 contract with a private vendor. The contract may provide that the vendor may
22 charge the party appearing by telephone a reasonable fee, specified in the contract,
23 for its services.
24

25 **(g) Audibility and procedure**

26
27 ~~Each~~ The court must ensure that the statements of participants are audible to all
28 other participants and that the statements made by a participant are identified as
29 being made by that participant.
30

31 **(h) Reporting**

32
33 All proceedings involving telephone appearances must be reported to the same
34 extent and in the same manner as if the participants had appeared in person.
35

36 **(i) Conference call provider**

37
38 A court, by local rule, may designate a particular conference call provider that must
39 be used for telephone appearances.
40

41 **(j) Information on telephone appearances**

1 Each ~~The~~ court must publish notice providing parties with the particular
2 information necessary for them to appear by telephone at conferences and hearings
3 in that court under this rule.
4

5 **Division 7. Civil Case Management**

6 **Chapter 1. General Provisions**

7 **Rule ~~3.700.204.~~ Scope and purpose of the case management rules**

8
9 The rules in this ~~chapter~~ division are to be construed and administered to secure the fair,
10 timely, and efficient disposition of every civil case. The rules are to be applied in a fair,
11 practical, and flexible manner so as to achieve the ends of justice.
12
13

14 **Chapter 2. Differential Case Management**

15 **Rule ~~3.710.205.~~ Authority**

16
17 The rules in this chapter implement Government Code section 68603(c) ~~of the~~
18 Government Code under the Trial Court Delay Reduction Act of 1990.
19

20 **Rule ~~3.711.206.~~ Local court rules**

21
22 Each court must adopt local rules on differential case management as provided in this
23 chapter consistent with ~~rule 212~~ the rules on case management in chapter 3 of this
24 division and of the California Rules of Court and the statement of general principles set
25 forth in section 2 standard 2.1 of the California Standards of Judicial Administration .
26
27

28 **Rule ~~3.712.207.~~ Application; and exceptions**

29 **(a) Application**

30
31 The rules in this chapter apply to all general civil cases filed in the trial courts
32 except those specified in (b) and (c).
33

34 **(b) General civil case**

35
36 As used in this chapter, “general civil case” means all civil cases except probate,
37 guardianship, conservatorship, family law (including proceedings under the Family
38 Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act;
39 freedom from parental custody and control proceedings; and adoption proceedings),
40 juvenile court proceedings, small claims proceedings, unlawful detainer
41
42

proceedings, and “other civil petitions” as defined by the Judicial Branch Statistical Information Data Collection Standards.

(e) (b) Uninsured motorist cases

To allow for arbitration of the plaintiff’s claim, the rules in this chapter do not apply to a case designated by the court as “uninsured motorist” until 180 days after the designation.

(d) (c) Coordination cases

The rules in this chapter do not apply to any case included in a petition for coordination. If the petition is granted, the coordination trial judge may establish a case progression plan for the cases, which may be within one of the three case management plans assigned for review under the case management rules in chapter 3 of this division or, after appropriate findings, within the for treatment as an exceptional case category.

Rule 3.713.208. Delay reduction goals

(a) Case management goals

The rules in this chapter are adopted to advance the goals of Government Code section 68607 of the Government Code and section 2 standard 2.1 of the California Standards of Judicial Administration ~~recommended by the Judicial Council within the time limits specified in section 68616 of the Government Code.~~

(b) Case disposition time goals

The goal of the court is to manage general civil cases from filing to disposition as provided under ~~sections 2.1 and 2.3~~ standard 2.2 of the California Standards of Judicial Administration.

(c) Judges’ responsibility

It is the responsibility of judges to achieve a just and effective resolution of each general civil case through active management and supervision of the pace of litigation from the date of filing to disposition.

Rule 3.714.209. Differentiation of cases to achieve goals

(a) Evaluation and assignment

1 The court must evaluate each case on its own merits as provided in rule ~~210~~ 3.715,
2 under procedures adopted by local court rules. After evaluation, the court must:

- 3
4 (1) Assign the case to the case management program for review under rule ~~212~~
5 the case management rules in chapter 3 of this division for disposition under
6 the case disposition time goals in (b) of this rule; or
7
8 (2) Exempt the case as an exceptional case under (c) of this rule from the case
9 disposition time goals specified in rule ~~208(b)~~ 3.713(b) and monitor it with the
10 goal of disposing of it within three years; or
11
12 (3) Assign the case under (d) of this rule to a local case management plan for
13 disposition within six to nine months after filing.
14

15 **(b) Civil case disposition time goals**
16

17 Civil cases assigned ~~to the case management program~~ for review under rule ~~212~~ the
18 case management rules in chapter 3 of this division should be managed so as to
19 achieve the following goals:
20

21 (1) *Unlimited civil cases*
22

23 The goal of each trial court should be to manage unlimited civil cases from
24 filing so that:

- 25
26 (A) 75 percent are disposed of within 12 months;
27
28 (B) 85 percent are disposed of within 18 months; and
29
30 (C) 100 percent are disposed of within 24 months.
31

32 (2) *Limited civil cases*
33

34 The goal of each trial court should be to manage limited civil cases from filing
35 so that:

- 36
37 (A) 90 percent are disposed of within 12 months;
38
39 (B) 98 percent are disposed of within 18 months; and
40
41 (C) 100 percent are disposed of within 24 months.
42

1 (3) *Individualized case management*

2
3 The goals in (1) and (2) are guidelines for the court's disposition of all
4 unlimited and limited civil cases filed in that court. In managing individual
5 civil cases, the court must consider each case on its merits. To enable the fair
6 and efficient resolution of civil cases, each case should be set for trial as soon
7 as appropriate for that individual case consistent with rule ~~212(j)~~ 3.729(j) .
8

9 (c) **Exemption of exceptional cases**

10
11 (1) The court may in the interest of justice exempt a general civil case from the
12 case disposition time goals under rule ~~208(b)~~ 3.713(b) if it finds the case
13 involves exceptional circumstances that will prevent the court and the parties
14 from meeting the goals and deadlines imposed by the program. In making the
15 determination, the court is guided by rules ~~210~~ 3.715 and ~~1800~~ 3.400 .
16

17 (2) If the court exempts the case from the case disposition time goals, the court
18 must establish a case progression plan and monitor the case to ensure timely
19 disposition consistent with the exceptional circumstances, with the goal of
20 disposing of the case within three years.
21

22 (d) **Local case management plan for expedited case disposition**

23
24 (1) For expedited case disposition, the court may by local rule adopt a case
25 management plan that establishes a goal for disposing of appropriate cases
26 within six to nine months after filing. The plan must establish a procedure to
27 identify the cases to be assigned to the plan.
28

29 (2) The plan must be used only for uncomplicated cases amenable to early
30 disposition that do not need a case management conference or review or
31 similar event to guide the case to early resolution.
32

33 **Rule ~~3.715.210~~ Case evaluation factors**

34
35 **(a) Time estimate**

36
37 In applying rule ~~209~~ 3.714, the court must estimate the maximum time that will
38 reasonably be required to dispose of each case in a just and effective manner. The
39 court must consider the following factors and any other information the court deems
40 relevant, understanding that no one factor or set of factors will be controlling and
41 that cases may have unique characteristics incapable of precise definition:
42

43 (1) Type and subject matter of the action;

- (2) Number of causes of action or affirmative defenses alleged;
- (3) Number of parties with separate interests;
- (4) Number of cross-complaints and the subject matter;
- (5) Complexity of issues, including issues of first impression;
- (6) Difficulty in identifying, locating, and serving parties;
- (7) Nature and extent of discovery anticipated;
- (8) Number and location of percipient and expert witnesses;
- (9) Estimated length of trial;
- (10) Whether some or all issues can be arbitrated or resolved through other alternative dispute resolution processes;
- (11) Statutory priority for the issues;
- (12) Likelihood of review by writ or appeal;
- (13) Amount in controversy and the type of remedy sought, including measures of damages;
- (14) Pendency of other actions or proceedings ~~which~~ that may affect the case;
- (15) Nature and extent of law and motion proceedings anticipated;
- (16) Nature and extent of the injuries and damages;
- (17) Pendency of underinsured claims; and
- (18) Any other factor that would affect the time for disposition of the case.

Chapter 3. Case Management

(Reviser's note: Current case management rule 212 has been divided into separate rules 3.720–3.730. Current subdivision (d) has not been included as a separate rule because its subject matter has been incorporated into rule 3.724.)

Rule 212. Case management conference; meet-and-confer requirement; and case management order

(a) Initial case management review

In every general civil case except complex cases and cases exempted under rules 207(c)–(d), 209(c)–(d), 214, and 243.8, the court must review the case no later than 180 days after the filing of the initial complaint.

(b) Case management conference

(1) Case management conference

In each case, the court must set an initial case management conference to review the case. At the conference, the court must review the case comprehensively and decide whether to assign the case to an alternative dispute resolution process, whether to set the case for trial, and the other matters stated in this rule. The initial case management conference should generally be the first case management event conducted by court order in each case, except for orders to show cause.

(2) Notice of the conference

Notice of the date of the case management conference must be given to all parties no later than 45 days before the conference, unless otherwise ordered by the court. The court may provide by local rule for the time and manner of giving notice to the parties.

(3) Appearances at the conference

At the conference, counsel for each party and each self-represented party must appear personally or, if permitted under rule 298(c)(2), by telephone,; must be familiar with the case,; and must be prepared to discuss and commit to the party's position on the issues listed in (e) and (f).

(4) Case management order without appearance

If, based on its review of the written submissions of the parties and such other information as is available, the court determines that appearances at the conference are not necessary, the court may issue a case management order and notify the parties that no appearance is required.

1 (5) ~~Option to excuse attendance at conferences in limited civil cases~~

2
3 In all general civil cases except those exempted under (a), the court must
4 review the case and issue a case management order under this rule, but by
5 local rule the court may provide that counsel and self-represented parties are
6 not to attend a case management conference in limited civil cases, unless
7 ordered to do so by the court.
8

9 (e) **Additional case management conferences**

10
11 The court on its own motion may order, or a party or parties may request, that an
12 additional case management conference be held at any time. A party should be
13 required to appear at an additional conference only if an appearance is necessary for
14 the effective management of the case. In determining whether to hold an additional
15 conference, the court must consider each case individually on its own merits.
16

17 (d) **Arbitration determination**

18
19 In courts having a judicial arbitration program under Code of Civil Procedure
20 section 1141.11, the court at the time of the case management conference or review
21 must determine if the case is suitable for judicial arbitration.
22

23 (e) **Subjects to be considered at the case management conference**

24
25 In any case management conference or review under this rule, the parties must
26 address, if applicable, and the court may take appropriate action with respect to, the
27 following:
28

29 (1) ~~Whether there are any related cases;~~

30
31 (2) ~~Whether all parties named in the complaint or cross-complaint have been~~
32 ~~served, have appeared, or have been dismissed;~~

33
34 (3) ~~Whether any additional parties may be added or the pleadings may be~~
35 ~~amended;~~

36
37 (4) ~~Whether, if the case is a limited civil case, the economic litigation procedures~~
38 ~~under Code of Civil Procedure section 90 et seq. will apply to it or the party~~
39 ~~intends to bring a motion to exempt the case from these procedures;~~

40
41 (5) ~~Whether any other matters (e.g., the bankruptcy of a party) may affect the~~
42 ~~court's jurisdiction or processing of the case;~~
43

- 1 (6) ~~Whether the parties have stipulated to, or the case should be referred to,~~
2 ~~judicial arbitration or any other form of alternative dispute resolution (ADR)~~
3 ~~and, if so, the date by which the ADR must be completed;~~
4
5 (7) ~~Whether an early settlement conference should be scheduled and, if so, on~~
6 ~~what date;~~
7
8 (8) ~~Whether discovery has been completed and, if not, the date by which it will be~~
9 ~~completed;~~
10
11 (9) ~~What discovery issues are anticipated;~~
12
13 (10) ~~Whether the case should be bifurcated or a hearing should be set for a motion~~
14 ~~to bifurcate under section 598 of the Code of Civil Procedure;~~
15
16 (11) ~~Whether there are any cross complaints that are not ready to be set for trial~~
17 ~~and, if so, whether they should be severed;~~
18
19 (12) ~~Whether the case is entitled to any statutory preference and, if so, the statute~~
20 ~~granting the preference;~~
21
22 (13) ~~Whether a jury trial is demanded, and, if so, the identity of each party~~
23 ~~requesting a jury trial;~~
24
25 (14) ~~If the trial date has not been previously set, the date by which the case will be~~
26 ~~ready for trial and the available trial dates;~~
27
28 (15) ~~The estimated length of trial;~~
29
30 (16) ~~The nature of the injuries;~~
31
32 (17) ~~The amount of damages, including any special or punitive damages;~~
33
34 (18) ~~Any additional relief sought;~~
35
36 (19) ~~Whether there are any insurance coverage issues that may affect the resolution~~
37 ~~of the case; and~~
38
39 (20) ~~Any other matters that should be considered by the court or addressed in its~~
40 ~~case management order.~~
41
42 (f) **Meet and confer requirement**
43

1 Unless the court orders another time period, no later than 30 calendar days before
2 the date set for the case management conference, the parties must meet and confer,
3 in person or by telephone, to consider each of the issues identified in (c) and, in
4 addition, to consider the following:

- 5 (1) Resolving any discovery disputes and setting a discovery schedule;
- 6 (2) Identifying and, if possible, informally resolving any anticipated motions;
- 7 (3) Identifying the facts and issues in the case that are uncontested and may be the
8 subject of stipulation;
- 9 (4) Identifying the facts and issues in the case that are in dispute;
- 10 (5) Determining whether the issues in the case can be narrowed by eliminating
11 any claims or defenses by means of a motion or otherwise;
- 12 (6) Possible settlement; and
- 13 (7) Identifying the dates on which all parties and their attorneys are available or
14 not available for trial, including the reasons for unavailability; and
- 15 (8) Other relevant matters.

16
17
18
19
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21
22
23
24
25 **(g) Case management statement**

26
27 *(1) Timing of statement*

28
29 No later than 15 calendar days before the date set for the case management
30 conference or review, each party must file a case management statement and
31 serve it on all other parties in the case.

32
33 *(2) Contents of statement*

34
35 Parties must use the mandatory *Case Management Statement* (form CM-110).
36 All applicable items on the form must be completed. In lieu of each party's
37 filing a separate case management statement, any two or more parties may file
38 a joint statement under this rule.

39
40 **(h) Stipulation to Alternative Dispute Resolution**
41

1 If all parties agree to use an alternative dispute resolution (ADR) process, they must
2 jointly complete the ADR stipulation form provided for under rule 201.9 and file it
3 with the court.
4

5 **(i) Case management order**
6

7 The case management conference must be conducted in the manner provided by
8 local rule. The court must enter a case management order setting a schedule for
9 subsequent proceedings and otherwise providing for the management of the case.
10 The order should include such provisions as may be appropriate, including:
11

- 12 (1) Referral of the case to judicial arbitration or some other form of alternative
13 dispute resolution;
- 14
- 15 (2) A date for completion of the arbitration process or other form of alternative
16 dispute resolution process if the case has been referred to such a process;
17
- 18 (3) In the event that a trial date has not previously been set, a date certain for trial
19 if the case is ready to be set for trial;
20
- 21 (4) Whether the trial will be a jury trial or a nonjury trial;
22
- 23 (5) The identity of each party demanding a jury trial;
24
- 25 (6) The estimated length of trial;
26
- 27 (7) Whether all parties necessary to the disposition of the case have been served
28 or have appeared;
29
- 30 (8) The dismissal or severance of unserved or not appearing defendants from the
31 action;
32
- 33 (9) The names and addresses of the attorneys who will try the case;
34
- 35 (10) The date, time, and place for a mandatory settlement conference as provided
36 in rule 222;
37
- 38 (11) The date, time, and place for the final case management conference before
39 trial if such a conference is required by the court or the judge assigned to the
40 case;
41
- 42 (12) The date, time, and place of any further case management conferences or
43 review; and

(13) Any additional orders that may be appropriate, including orders on matters listed in (e) and (f).

(j) ~~Setting the trial date~~

~~In setting a case for trial, the court, at the initial case management conference or at any other proceeding at which the case is set for trial, must consider all the facts and circumstances that are relevant. These may include:~~

- ~~(1) Type and subject matter of the action to be tried;~~
- ~~(2) Whether the case has statutory priority;~~
- ~~(3) Number of causes of action, cross actions, and affirmative defenses that will be tried;~~
- ~~(4) Whether any significant amendments to the pleadings have been made recently or are likely to be made before trial;~~
- ~~(5) Whether the plaintiff intends to bring a motion to amend the complaint to seek punitive damages under section 425.13 of the Code of Civil Procedure;~~
- ~~(6) Number of parties with separate interests who will be involved in the trial;~~
- ~~(7) The complexity of the issues to be tried, including issues of first impression;~~
- ~~(8) Any difficulties in identifying, locating, or serving parties;~~
- ~~(9) Whether all parties have been served and, if so, the date by which they were served;~~
- ~~(10) Whether all parties have appeared in the action and, if so, the date by which they appeared;~~
- ~~(11) How long the attorneys who will try the case have been involved in the action;~~
- ~~(12) The trial date or dates proposed by the parties and their attorneys;~~
- ~~(13) The professional and personal schedules of the parties and their attorneys, including any conflicts with previously assigned trial dates or other significant events;~~

1 (14) ~~The amount of discovery, if any, that remains to be conducted in the case;~~

2
3 (15) ~~The nature and extent of law and motion proceedings anticipated, including~~
4 ~~whether any motions for summary judgment will be filed;~~

5
6 (16) ~~Whether any other actions or proceedings that are pending may affect the~~
7 ~~case;~~

8
9 (17) ~~The amount in controversy and the type of remedy sought;~~

10
11 (18) ~~The nature and extent of the injuries or damages, including whether these are~~
12 ~~ready for determination;~~

13
14 (19) ~~The court's trial calendar, including the pendency of other trial dates;~~

15
16 (20) ~~Whether the trial will be a jury or a nonjury trial;~~

17
18 (21) ~~The anticipated length of trial;~~

19
20 (22) ~~The number, availability, and locations of witnesses, including witnesses who~~
21 ~~reside outside the county, state, or country;~~

22
23 (23) ~~Whether there have been any previous continuances of the trial or delays in~~
24 ~~setting the case for trial;~~

25
26 (24) ~~The achievement of a fair, timely, and efficient disposition of the case; and~~

27
28 (25) ~~Any other factor that would significantly affect the determination of the~~
29 ~~appropriate date of trial.~~

30
31 **~~(k) Case management order controls~~**

32
33 ~~The order issued after the case management conference or review controls the~~
34 ~~subsequent course of the action or proceeding unless it is modified by a subsequent~~
35 ~~order.~~

36
37 **Advisory Committee Comment**

38
39 ~~Regarding rule 212(c) on additional case management conferences, in many civil cases one initial~~
40 ~~conference and one other conference before trial will be sufficient. But in other cases including~~
41 ~~complicated or difficult cases, the court may order an additional case management conference or~~
42 ~~conferences if that would promote the fair and efficient administration of the case.~~

1 **Rule 3.720. Application**

2
3 The rules in this chapter prescribe the procedures for the management of all applicable
4 court cases. These rules may be referred to as “the case management rules.”
5

6 **Rule 3.721. Case management review**

7
8 In every general civil case except complex cases and cases exempted under rules
9 3.712(b)–(c), 3.714(c)–(d), 3.735(b), and 2.573(e) , the court must review the case no
10 later than 180 days after the filing of the initial complaint.
11

12 **Rule 3.722. Case management conference**

13
14 **(a) The initial conference**

15
16 In each case, the court must set an initial case management conference to review the
17 case. At the conference, the court must review the case comprehensively and decide
18 whether to assign the case to an alternative dispute resolution process, whether to
19 set the case for trial, and the other matters stated in this rule. The initial case
20 management conference should generally be the first case management event
21 conducted by court order in each case, except for orders to show cause.
22

23 **(b) Notice of the initial conference**

24
25 Notice of the date of the initial case management conference must be given to all
26 parties no later than 45 days before the conference, unless otherwise ordered by the
27 court. The court may provide by local rule for the time and manner of giving notice
28 to the parties.
29

30 **(c) Preparation for the conference**

31
32 At the conference, counsel for each party and each self-represented party must
33 appear personally or, if permitted under rule 3.670(c)(2), by telephone; must be
34 familiar with the case; and must be prepared to discuss and commit to the party’s
35 position on the issues listed in rules 3.735 and 3.736.
36

37 **(d) Case management order without appearance**

38
39 If, based on its review of the written submissions of the parties and such other
40 information as is available, the court determines that appearances at the conference
41 are not necessary, the court may issue a case management order and notify the
42 parties that no appearance is required.
43

1 **(e) Option to excuse attendance at initial conferences in limited civil cases**

2
3 By local rule the court may provide that counsel and self-represented parties are not
4 to attend an initial case management conference in limited civil cases unless ordered
5 to do so by the court.
6

7 **Rule 3.723. Additional case management conferences**

8
9 The court on its own motion may order, or a party or parties may request, that an
10 additional case management conference be held at any time. A party should be required
11 to appear at an additional conference only if an appearance is necessary for the effective
12 management of the case. In determining whether to hold an additional conference, the
13 court must consider each case individually on its own merits.
14

15 **Advisory Committee Comment**

16
17 Regarding additional case management conferences, in many civil cases one initial conference and one
18 other conference before trial will be sufficient. But in other cases including complicated or difficult cases,
19 the court may order an additional case management conference or conferences if that would promote the
20 fair and efficient administration of the case.
21

22 **Rule 3.724. Subjects to be considered at the case management conference**

23
24 In any case management conference or review conducted under this chapter, the parties
25 must address, if applicable, and the court may take appropriate action with respect to, the
26 following:
27

- 28 (1) Whether there are any related cases;
29
30 (2) Whether all parties named in the complaint or cross-complaint have been served,
31 have appeared, or have been dismissed;
32
33 (3) Whether any additional parties may be added or the pleadings may be amended;
34
35 (4) Whether, if the case is a limited civil case, the economic litigation procedures under
36 Code of Civil Procedure section 90 et seq. will apply to it or the party intends to
37 bring a motion to exempt the case from these procedures;
38
39 (5) Whether any other matters (e.g., the bankruptcy of a party) may affect the court's
40 jurisdiction or processing of the case;
41
42 (6) Whether the parties have stipulated to, or the case should be referred to, judicial
43 arbitration in courts having a judicial arbitration program or to any other form of

- 1 alternative dispute resolution (ADR) process and, if so, the date by which the
2 judicial arbitration or other ADR process must be completed;
3
4 (7) Whether an early settlement conference should be scheduled and, if so, on what
5 date;
6
7 (8) Whether discovery has been completed and, if not, the date by which it will be
8 completed;
9
10 (9) What discovery issues are anticipated;
11
12 (10) Whether the case should be bifurcated or a hearing should be set for a motion to
13 bifurcate under Code of Civil Procedure section 598;
14
15 (11) Whether there are any cross-complaints that are not ready to be set for trial and, if
16 so, whether they should be severed;
17
18 (12) Whether the case is entitled to any statutory preference and, if so, the statute
19 granting the preference;
20
21 (13) Whether a jury trial is demanded, and, if so, the identity of each party requesting a
22 jury trial;
23
24 (14) If the trial date has not been previously set, the date by which the case will be ready
25 for trial and the available trial dates;
26
27 (15) The estimated length of trial;
28
29 (16) The nature of the injuries;
30
31 (17) The amount of damages, including any special or punitive damages;
32
33 (18) Any additional relief sought;
34
35 (19) Whether there are any insurance coverage issues that may affect the resolution of
36 the case; and
37
38 (20) Any other matters that should be considered by the court or addressed in its case
39 management order.
40

41 **Rule 3.725. Duty to meet and confer**
42

1 Unless the court orders another time period, no later than 30 calendar days before the date
2 set for the case management conference, the parties must meet and confer, in person or
3 by telephone, to consider each of the issues identified in rule 3.724 and, in addition, to
4 consider the following:

- 5
- 6 (1) Resolving any discovery disputes and setting a discovery schedule;
- 7
- 8 (2) Identifying and, if possible, informally resolving any anticipated motions;
- 9
- 10 (3) Identifying the facts and issues in the case that are uncontested and may be the
11 subject of stipulation;
- 12
- 13 (4) Identifying the facts and issues in the case that are in dispute;
- 14
- 15 (5) Determining whether the issues in the case can be narrowed by eliminating any
16 claims or defenses by means of a motion or otherwise;
- 17
- 18 (6) Determining whether settlement is possible;
- 19
- 20 (7) Identifying the dates on which all parties and their attorneys are available or not
21 available for trial, including the reasons for unavailability; and
- 22
- 23 (8) Other relevant matters.
- 24

25 **Rule 3.726. Case Management Statement**

26 27 **(a) Timing of statement**

28
29 No later than 15 calendar days before the date set for the case management
30 conference or review, each party must file a case management statement and serve
31 it on all other parties in the case.

32 33 **(b) Joint statement**

34
35 In lieu of each party's filing a separate case management statement, any two or
36 more parties may file a joint statement.

37 38 **(c) Contents of statement**

39
40 Parties must use the mandatory *Case Management Statement* (form CM-110). All
41 applicable items on the form must be completed.

1 **Rule 3.727. Stipulation to Alternative Dispute Resolution**

2
3 If all parties agree to use an alternative dispute resolution (ADR) process, they must
4 jointly complete the ADR stipulation form provided for under rule 3.221 and file it with
5 the court.
6

7 **Rule 3.728. Case management order**

8
9 The case management conference must be conducted in the manner provided by local
10 rule. The court must enter a case management order setting a schedule for subsequent
11 proceedings and otherwise providing for the management of the case. The order may
12 include appropriate provisions, such as:
13

- 14 (1) Referral of the case to judicial arbitration or other alternative dispute resolution
15 process;
16
- 17 (2) A date for completion of the judicial arbitration process or other alternative dispute
18 resolution process if the case has been referred to such a process;
19
- 20 (3) In the event that a trial date has not previously been set, a date certain for trial if the
21 case is ready to be set for trial;
22
- 23 (4) Whether the trial will be a jury trial or a nonjury trial;
24
- 25 (5) The identity of each party demanding a jury trial;
26
- 27 (6) The estimated length of trial;
28
- 29 (7) Whether all parties necessary to the disposition of the case have been served or have
30 appeared;
31
- 32 (8) The dismissal or severance of unserved or not-appearing defendants from the
33 action;
34
- 35 (9) The names and addresses of the attorneys who will try the case;
36
- 37 (10) The date, time, and place for a mandatory settlement conference as provided in rule
38 3.1380 ;
39
- 40 (11) The date, time, and place for the final case management conference before trial if
41 such a conference is required by the court or the judge assigned to the case;
42

1 (12) The date, time, and place of any further case management conferences or review;
2 and

3
4 (13) Any additional orders that may be appropriate, including orders on matters listed in
5 rules 3.724 and 3.725.

6
7 **Rule 3.729. Setting the trial date**

8
9 In setting a case for trial, the court, at the initial case management conference or at any
10 other proceeding at which the case is set for trial, must consider all the facts and
11 circumstances that are relevant. These may include:

12
13 (1) The type and subject matter of the action to be tried;

14
15 (2) Whether the case has statutory priority;

16
17 (3) The number of causes of action, cross-actions, and affirmative defenses that will be
18 tried;

19
20 (4) Whether any significant amendments to the pleadings have been made recently or
21 are likely to be made before trial;

22
23 (5) Whether the plaintiff intends to bring a motion to amend the complaint to seek
24 punitive damages under Code of Civil Procedure section 425.13;

25
26 (6) The number of parties with separate interests who will be involved in the trial;

27
28 (7) The complexity of the issues to be tried, including issues of first impression;

29
30 (8) Any difficulties in identifying, locating, or serving parties;

31
32 (9) Whether all parties have been served and, if so, the date by which they were served;

33
34 (10) Whether all parties have appeared in the action and, if so, the date by which they
35 appeared;

36
37 (11) How long the attorneys who will try the case have been involved in the action;

38
39 (12) The trial date or dates proposed by the parties and their attorneys;

40
41 (13) The professional and personal schedules of the parties and their attorneys, including
42 any conflicts with previously assigned trial dates or other significant events;
43

- 1 (14) The amount of discovery, if any, that remains to be conducted in the case;
2
3 (15) The nature and extent of law and motion proceedings anticipated, including whether
4 any motions for summary judgment will be filed;
5
6 (16) Whether any other actions or proceedings that are pending may affect the case;
7
8 (17) The amount in controversy and the type of remedy sought;
9
10 (18) The nature and extent of the injuries or damages, including whether these are ready
11 for determination;
12
13 (19) The court's trial calendar, including the pendency of other trial dates;
14
15 (20) Whether the trial will be a jury or a nonjury trial;
16
17 (21) The anticipated length of trial;
18
19 (22) The number, availability, and locations of witnesses, including witnesses who
20 reside outside the county, state, or country;
21
22 (23) Whether there have been any previous continuances of the trial or delays in setting
23 the case for trial;
24
25 (24) The achievement of a fair, timely, and efficient disposition of the case; and
26
27 (25) Any other factor that would significantly affect the determination of the appropriate
28 date of trial.
29

30 **Rule 3.730. Case management order controls**
31

32 The order issued after the case management conference or review controls the subsequent
33 course of the action or proceeding unless it is modified by a subsequent order.
34

35 **Rule ~~3.734.213.~~ Assignment to one judge for all or limited purposes**
36

37 The presiding judge may, on the noticed motion of a party or on the court's own motion,
38 order the assignment of any case to one judge for all or such limited purposes as will
39 promote the efficient administration of justice.
40

41 **Rule ~~3.735.214.~~ Management of short cause cases**
42

1 **(a) Short cause cases defined**

2
3 A short cause case is a civil case in which the time estimated for trial by all parties
4 or the court is five hours or less. All other civil cases are long cause cases.
5

6 **(b) Exemption for short cause case and setting of case for trial**

7
8 The court may order, upon the stipulation of all parties or the court's own motion,
9 that a case is a short cause case exempted from the requirements of case
10 management review and set the case for trial.
11

12 **(c) Mistrial**

13
14 If a short cause case is not completely tried within five hours, the judge may declare
15 a mistrial or, in the judge's discretion, may complete the trial. In the event of a
16 mistrial, the case will be treated as a long cause case and must promptly be set
17 either for a new trial or for a case management conference.
18

19 **Chapter 4. Management of Complex Cases**

20
21 **Rule 3.750. Initial case management conference**

22
23 **(a) Timing of conference**

24
25 The court in a complex case should hold an initial case management conference
26 with all parties represented at the earliest practical date.
27

28 **(b) Subjects for consideration**

29
30 At the conference, the court should consider the following subjects:
31

32 (1) Whether all parties named in the complaint or cross-complaint have been
33 served, have appeared, or have been dismissed;
34

35 (2) Whether any additional parties may be added or the pleadings may be
36 amended;
37

38 (3) The deadline for the filing of any remaining pleadings and service of any
39 additional parties;
40

41 (4) Whether severance, consolidation, or coordination with other actions is
42 desirable;
43

- 1 (5) The schedule for discovery proceedings to avoid duplication and whether
2 discovery should be stayed until all parties have been brought into the case;
3
4 (6) The schedule for settlement conferences or alternative dispute resolution;
5
6 (7) Whether to appoint liaison or lead counsel;
7
8 (8) The date for the filing of any dispositive motions;
9
10 (9) The creation of preliminary and updated lists of the persons to be deposed and
11 the subjects to be addressed in each deposition;
12
13 (10) The exchange of documents and whether to establish an electronic document
14 depository;
15
16 (11) Whether a special master should be appointed and the purposes for such
17 appointment;
18
19 (12) Whether to establish a case-based Web site and other means to provide a
20 current master list of addresses and telephone numbers of counsel; and
21
22 (13) The schedule for further conferences.

23
24 **(c) Objects of conference**

25
26 Principal objects of the initial case management conference are to expose at an early
27 date the essential issues in the litigation and to avoid unnecessary and burdensome
28 discovery procedures in the course of preparing for trial of those issues.
29

30 **(d) Meet and confer requirement**

31
32 The court may order counsel to meet privately before the initial case management
33 conference to discuss the items specified in (a) and to prepare a joint statement of
34 matters agreed upon, matters on which the court must rule at the conference, and a
35 description of the major legal and factual issues involved in the litigation.
36

37 **(Reviser's note: Rule 3.750 is new. It is based on current section 19(e)–(f) of the**
38 **California Standards of Judicial Administration, which would be repealed.)**
39

40 **Rule 3.751.1830. Electronic service**

41
42 The court may provide in a case management order that documents filed electronically in
43 a central electronic depository available to all parties are deemed served on all parties.

1
2 **Chapter 5. Management of Class Actions**
3

4 **Rule ~~3.760.1850.~~ Applicability**
5

6 **(a) Class actions**
7

8 The rules ~~contained~~ in this chapter 2 apply to each class action brought under Civil
9 Code section 1750 et seq. or Code of Civil Procedure section 382 until ~~such time as~~
10 the court finds the action is not maintainable as a class action or revokes a prior
11 class certification of the class.
12

13 **(b) Relief from compliance with rules**
14

15 ~~In an appropriate case,~~ The court, on its own motion or on motion of any named
16 party, may grant relief from compliance with these rules in this chapter in an
17 appropriate case.
18

19 **Rule ~~3.761.1851.~~ Form of complaint**
20

21 **(a) Caption of pleadings**
22

23 A complaint for or against a class party must include in the caption the designation
24 “CLASS ACTION.” This designation must be in capital letters on the first page of
25 the complaint, immediately below the case number but above the description of the
26 nature of the complaint.
27

28 **(b) Heading and class action allegations**
29

30 The complaint in a class action must contain a separate heading entitled “CLASS
31 ACTION ALLEGATIONS,” under which the plaintiff describes how the
32 requirements for class certification are met.
33

34 **Rule ~~3.762.1852.~~ Case conference**
35

36 **(a) Purpose**
37

38 One or more conferences between the court and counsel for the parties may be held
39 to discuss class issues, conduct and scheduling of discovery, scheduling of hearings,
40 and other matters. No evidence may be presented at the conference, but counsel
41 must be fully prepared to discuss class issues and must possess authority to enter
42 into stipulations.
43

1 **(b) Notice by the parties**

2
3 Notice of the conference may be given by any party. If notice is given by a named
4 plaintiff, notice must be served on all named parties to the action. If notice is given
5 by a defendant, notice must be served only on the parties who have appeared.
6 Within 10 calendar days after receipt of the notice, the plaintiff must serve a copy
7 on each named party who has not appeared in the action and must ~~submit~~ file a
8 declaration of service. If the plaintiff is unable to serve any party, the plaintiff must
9 ~~submit~~ file a declaration stating the reasons for failure of service.
10

11 **(c) Notice by the court**

12
13 The court may give notice of the conference to the plaintiff. Within 10 calendar
14 days after receipt of the notice given by the court, the plaintiff must serve a copy of
15 the notice on all parties who have been served in the action, whether they have
16 appeared or not, and must ~~submit~~ file a declaration of service. If the plaintiff is
17 unable to serve any party, the plaintiff must ~~submit~~ file a declaration stating the
18 reasons for failure of service.
19

20 **(d) Timing of notice**

21
22 The notice must be filed and served on the parties at least 20 calendar days ~~prior to~~
23 before the scheduled date of the conference.
24

25 **(e) Timing of conference**

26
27 A conference may be held at any time after the first defendant has appeared. ~~Prior to~~
28 Before selecting a conference date, the party noticing the conference must:
29

- 30 (1) Obtain prior approval from the clerk of the department assigned to hear the
31 class action; and
32
33 (2) Make reasonable efforts to accommodate the schedules of all parties entitled
34 to receive notice under ~~subdivision~~ (b).
35

36 **Rule ~~3.763.1853~~ 3.763.1853. Conference order**

37
38 At the conclusion of the conference, the court may make an order:
39

- 40 (1) Approving any stipulations of the parties;
41
42 (2) Establishing a schedule for discovery;
43

- (3) Setting the date for the hearing on class certification;
- (4) Setting the dates for any subsequent conferences; and
- (5) Addressing any other matters related to management of the case.

Rule ~~3.764.1854~~ 3.764.1854. Motion to certify or decertify a class or amend or modify an order certifying a class

(a) Purpose

Any party may file a motion to:

- (1) Certify a class;
- (2) Determine the existence of and certify subclasses;
- (3) Amend or modify an order certifying a class; or
- (4) Decertify a class.

(b) Timing of motion, hearing, extension, deferral

A motion for class certification should be filed when practicable. In its discretion, the court may establish a deadline for the filing of the motion, as part of the case conference or as part of other case management proceedings. Any such deadline must take into account discovery proceedings that may be necessary to the filing of the motion.

(c) Format and filing of motion

(1) Time for service of papers

Notice of a motion to certify or decertify a class or to amend or modify a certification order must be filed and served on all parties to the action at least 28 calendar days ~~prior to~~ before the date appointed for hearing. Any opposition to the motion must be served and filed at least 14 calendar days ~~preceding~~ before the noticed or continued hearing, unless the court for good cause orders otherwise. Any reply to the opposition must be served and filed ~~not less than~~ at least 5 calendar days ~~preceding~~ before the noticed or continued date of the hearing, unless the court for good cause orders otherwise. The provisions of Code of Civil Procedure section 1005 otherwise apply.

1 (2) *Length of papers*

2
3 An opening or responding memorandum ~~of points and authorities~~ filed with
4 respect to in support of or in opposition to a motion for class certification must
5 not exceed 20 pages. A reply memorandum must not exceed 15 pages. The
6 provisions of rule ~~343~~ 3.1113 otherwise apply.
7

8 (3) *Documents in support*

9
10 The documents in support of a motion for class certification consist of the
11 notice of motion; a memorandum ~~of points and authorities in support of the~~
12 ~~motion~~; evidence in support of the motion in the form of declarations of
13 counsel, class representatives, or other appropriate declarants; and any
14 requests for judicial notice.
15

16 (4) *Documents in opposition*

17
18 The documents in opposition to the motion consist of the opposing party's
19 memorandum ~~of points and authorities~~; the opposing party's evidence in
20 opposition to the motion, including any declarations of counsel or other
21 appropriate declarants; and any requests for judicial notice.
22

23 (d) **Presentation of evidence**

24
25 Evidence to be considered at the hearing must be presented in accordance with rule
26 ~~323~~ 3.1306.
27

28 (e) **Stipulations**

29
30 The parties should endeavor to resolve any uncontroverted issues by written
31 stipulation before the hearing. If all class issues are resolved by stipulation of the
32 named parties and approved by the court before the hearing, no hearing on class
33 certification is necessary.
34

35 **Rule ~~3.765.1855~~ 3.765.1855. Class action order**

36
37 (a) **Class described**

38
39 An order certifying, amending, or modifying a class must contain a description of
40 the class and any subclasses.
41

42 (b) **Limited issues and subclasses**

1 When appropriate, an action may be maintained as a class action limited to
2 particular issues. A class may be divided into subclasses.
3

4 **Rule ~~3.766.1856~~ 3.766. Notice to class members**
5

6 **(a) Party to provide notice**
7

8 If the class is certified, the court may require either party to notify the class of the
9 action in the manner specified by the court.
10

11 **(b) Statement regarding class notice**
12

13 The class proponent must submit a statement regarding class notice and a proposed
14 notice to class members. The statement must include the following items:
15

- 16 (1) Whether notice is necessary;
17
- 18 (2) Whether class members may exclude themselves from the action;
19
- 20 (3) The time and manner in which notice should be given;
21
- 22 (4) A proposal for which parties should bear the costs of notice; and,
23
- 24 (5) If cost shifting or sharing is proposed under subdivision (4), an estimate of the
25 cost involved in giving notice.
26

27 **(c) Order**
28

29 Upon certification of a class, or as soon thereafter as practicable, the court must
30 make an order determining:
31

- 32 (1) Whether notice to class members is necessary;
33
- 34 (2) Whether class members may exclude themselves from the action;
35
- 36 (3) The time and manner of notice;
37
- 38 (4) The content of the notice; and
39
- 40 (5) The parties responsible for the cost of notice.
41

42 **(d) Content of class notice**
43

1 The content of the class notice is subject to court approval. If class members are to
2 be given the right to request exclusion from the class, the notice must include the
3 following:

- 4
- 5 (1) A brief explanation of the case, including the basic contentions or denials of
6 the parties;
 - 7
 - 8 (2) A statement that the court will exclude the member from the class if the
9 member so requests by a specified date;
 - 10
 - 11 (3) A procedure for the member to follow in requesting exclusion from the class;
 - 12
 - 13 (4) A statement that the judgment, whether favorable or not, will bind all
14 members who do not request exclusion; and
 - 15
 - 16 (5) A statement that any member who does not request exclusion may, if the
17 member so desires, enter an appearance through counsel.
 - 18

19 **(e) Manner of giving notice**

20
21 In determining the manner of the notice, the court must consider:

- 22
- 23 (1) The interests of the class;
 - 24
 - 25 (2) The type of relief requested;
 - 26
 - 27 (3) The stake of the individual class members;
 - 28
 - 29 (4) The cost of notifying class members;
 - 30
 - 31 (5) The resources of the parties;
 - 32
 - 33 (6) The possible prejudice to class members who do not receive notice; and
 - 34
 - 35 (7) The res judicata effect on class members.
 - 36

37 **(f) Court may order means of notice**

38
39 If personal notification is unreasonably expensive or the stake of individual class
40 members is insubstantial, or if it appears that all members of the class cannot be
41 notified personally, the court may order a means of notice reasonably calculated to
42 apprise the class members of the pendency of the action—for example, publication
43 in a newspaper or magazine; broadcasting on television, radio, or the Internet; or

posting or distribution through a trade or professional association, union, or public interest group.

Rule ~~3.767.1857~~. Orders in the conduct of class actions

(a) Court orders

In the conduct of a class action, the court may make orders that:

- (1) Require that some or all of the members of the class be given notice in such manner as the court may direct of any action in the proceeding, or of their opportunity to seek to appear and indicate whether they consider the representation fair and adequate, or of the proposed extent of the judgment;
- (2) Impose conditions on the representative parties or on intervenors;
- (3) Require that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly;
- (4) Facilitate the management of class actions through consolidation, severance, coordination, bifurcation, intervention, or joinder; and
- (5) Address similar procedural matters.

(b) Altered or amended orders

The orders may be altered or amended as necessary.

Rule ~~3.768.1858~~. Discovery from unnamed class members

(a) Types of discovery permitted

The following types of discovery may be sought, through service of a subpoena and without a court order, from a member of a class who is not a party representative or who has not appeared:

- (1) An oral deposition;
- (2) A written deposition; and
- (3) A deposition for production of business records and things.

1 **(b) Motion for protective order**

2
3 A party representative, deponent, or other affected person may move for a
4 protective order to preclude or limit the discovery.
5

6 **(c) Interrogatories require court order**

7
8 A party may not serve interrogatories on a member of a class who is not a party
9 representative or who has not appeared, without a court order.
10

11 **(d) Determination by court**

12
13 In deciding whether to allow the discovery requested under ~~subdivision~~ (a) or (c),
14 the court must consider, among other relevant factors:

- 15
16 (1) The timing of the request;
17
18 (2) The subject matter to be covered;
19
20 (3) The materiality of the information being sought;
21
22 (4) The likelihood that class members have such information;
23
24 (5) The possibility of reaching factual stipulations that eliminate the need for such
25 discovery;
26
27 (6) Whether class representatives are seeking discovery on the subject to be
28 covered; and
29
30 (7) Whether discovery will result in annoyance, oppression, or undue burden or
31 expense for the members of the class.
32

33 **Rule ~~3.769.1859~~. Settlement of class actions**

34
35 **(a) Court approval; after hearing**

36
37 A settlement or compromise of an entire class action, or of a cause of action in a
38 class action, or as to a party, requires the approval of the court after hearing.
39

40 **(b) Attorney's fees**

41
42 Any agreement, express or implied, that has been entered into with respect to the
43 payment of attorney's fees or the submission of an application for the approval of

attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

(c) Preliminary approval of settlement

Any party to a settlement agreement may ~~submit~~ serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

(d) Order certifying provisional settlement class

The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

(e) Order for final approval hearing

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

(f) Class Notice to class of final approval hearing

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

(g) Conduct of final approval hearing

Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(h) Judgment

If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment.

Rule ~~3.770.1860~~. Dismissal of class actions

1 **(a) Court approval of dismissal**

2
3 A dismissal of an entire class action, or of any party or cause of action in a class
4 action, requires court approval. Requests for dismissal must be accompanied by an
5 affidavit or a declaration setting forth the facts on which the party relies. The
6 affidavit or declaration must clearly state whether consideration, direct or indirect,
7 is being given for the dismissal and must describe the consideration in detail.
8

9 **(b) Hearing on request for dismissal**

10
11 The court may grant the request without a hearing. If the request is disapproved,
12 notice of tentative disapproval must be sent to the attorneys of record. Any party
13 may seek, within 15 calendar days of the service of the notice of tentative
14 disapproval, a hearing on the request. If no hearing is sought within that period, the
15 request for dismissal will be deemed denied.
16

17 **(c) Class Notice to class of dismissal**

18
19 If the court has certified the class, and notice of the pendency of the action has been
20 provided to class members, notice of the dismissal must be given to the class in the
21 manner specified by the court. If the court has not ruled on class certification, or if
22 notice of the pendency of the action has not been provided to class members in a
23 case in which such notice was required, notice of the proposed dismissal may be
24 given in the manner and to those class members specified by the court, or the action
25 may be dismissed without notice to the class members if the court finds that the
26 dismissal will not prejudice them.
27

28 **Rule 3.771.1861. Judgment**

29
30 **(a) Class members to be included in judgment**

31
32 The judgment in an action maintained as a class action must include and describe
33 those whom the court finds to be members of the class.
34

35 **(b) Notice of judgment to class**

36
37 Notice of the judgment must be given to the class in the manner specified by the
38 court.
39

40 **Division 8. Alternative Dispute Resolution**

41
42 **Chapter 1. General Provisions**

1 **Rule ~~3.800.1580~~. Definitions**

2
3 As used in this division:

4
5 ~~(a)~~ (1) “Alternative dispute resolution process” or “ADR process” means a process,
6 other than formal litigation, in which a neutral person or persons resolve a dispute
7 or assist parties in resolving their dispute.
8

9 ~~(b)~~ “~~General civil case~~” means ~~all limited and unlimited civil cases except probate,~~
10 ~~guardianship, conservatorship, family law (including proceedings under the Family~~
11 ~~Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act;~~
12 ~~freedom from parental custody and control proceedings; and adoption proceedings);~~
13 ~~juvenile court proceedings, small claims proceedings, unlawful detainer~~
14 ~~proceedings, and other civil petitions as defined by the Judicial Branch Statistical~~
15 ~~Information System Data Collection Standards.~~
16

17 ~~(e)~~ (2) “Mediation” means a process in which a neutral person or persons facilitate
18 communication between disputants to assist them in reaching a mutually acceptable
19 agreement. As used in this division, mediation does not include a settlement
20 conference under rule ~~222. 3.1380~~ of the California Rules of Court.
21

22 **Chapter 2. Judicial Arbitration**

23
24 **Rule ~~3.810.1600~~. Applicability of rules**

25
26 The rules in this chapter (commencing with this rule) apply if Code of Civil Procedure,
27 part 3, title 3, chapter 2.5 (commencing with section 1141.10) is in effect.
28

29 **Rule ~~3.811.1601~~. Cases subject to and exempt from arbitration**

30
31 **(a) Cases subject to arbitration**

32
33 Except as provided in (b), the following cases must be arbitrated:

34
35 (1) In each superior court with 18 or more authorized judges, all unlimited civil
36 cases where the amount in controversy does not exceed \$50,000 as to any
37 plaintiff;
38

39 (2) In each superior court with fewer than 18 authorized judges that so provides
40 by local rule, all unlimited civil cases where the amount in controversy does
41 not exceed \$50,000 as to any plaintiff;
42

43 (3) All limited civil cases in courts that so provide by local rule;

- 1
2 (4) Upon stipulation, any limited or unlimited civil case in any court, regardless of
3 the amount in controversy; and
4
5 (5) Upon filing of an election by all plaintiffs, any limited or unlimited civil case
6 in any court in which each plaintiff agrees that the arbitration award will not
7 exceed \$50,000 as to that plaintiff.
8

9 **(b) Cases exempt from arbitration**

10
11 The following cases are exempt from arbitration:
12

- 13 (1) Cases that include a prayer for equitable relief that is not frivolous or
14 insubstantial;
15
16 (2) Class actions;
17
18 (3) Small claims cases or trials de novo on appeal from the small claims court;
19
20 (4) Unlawful detainer proceedings;
21
22 (5) Family Law Act proceedings except as provided in Family Code section 2554;
23
24 (6) Any case otherwise subject to arbitration that is found by the court not to be
25 amenable to arbitration on the ground that arbitration would not reduce the
26 probable time and expense necessary to resolve the litigation;
27
28 (7) Any category of cases otherwise subject to arbitration but excluded by local
29 rule as not amenable to arbitration on the ground that, under the circumstances
30 relating to the particular court, arbitration of such cases would not reduce the
31 probable time and expense necessary to resolve the litigation; and
32
33 (8) Cases involving multiple causes of action or a cross-complaint if the court
34 determines that the amount in controversy as to any given cause of action or
35 cross-complaint exceeds \$50,000.
36

37 **Rule ~~3.812.1602~~ Assignment to arbitration**

38
39 **(a) Stipulations to arbitration**

40
41 When the parties stipulate to arbitration, the case must be set for arbitration
42 forthwith. The stipulation must be filed no later than the time the initial case
43 management statement is filed, unless the court orders otherwise.

1
2 **(b) Plaintiff election for arbitration**
3

4 Upon written election of all plaintiffs to submit a case to arbitration, the case must
5 be set for arbitration forthwith, subject to a motion by defendant for good cause to
6 delay the arbitration hearing. The election must be filed no later than the time the
7 initial case management statement is filed, unless the court orders otherwise.
8

9 **(c) Cross-actions**
10

11 A case involving a cross-complaint where all plaintiffs have elected to arbitrate
12 must be removed from the list of cases assigned to arbitration if, upon motion of the
13 cross-complainant made within 15 days after notice of the election to arbitrate, the
14 court determines that the amount in controversy relating to the cross-complaint
15 exceeds \$50,000.
16

17 **(d) Case management conference**
18

19 Absent a stipulation or an election by all plaintiffs to submit to arbitration, cases
20 must be set for arbitration when the court determines that the amount in controversy
21 does not exceed \$50,000. The amount in controversy must be determined at the first
22 case management conference or review under ~~rule 212~~ the rules on case
23 management in division 7 of this title that takes place after all named parties have
24 appeared or defaulted.
25

26 **Rule ~~3.813.1603~~. Arbitration program administration**
27

28 **(a) Arbitration administrator**
29

30 The presiding judge must designate the ADR administrator selected under rule
31 ~~1580.3 6.903~~ to serve as arbitration administrator. The arbitration administrator
32 must supervise the selection of arbitrators for the cases on the arbitration hearing
33 list, generally supervise the operation of the arbitration program, and perform any
34 additional duties delegated by the presiding judge.
35

36 **(b) Responsibilities of ADR committee**
37

38 The ADR committee established under rule ~~1580.3 6.903~~ is responsible for:
39

- 40 (1) Appointing the panels of arbitrators provided for in rule ~~1604 3.814~~;
41
42 (2) Removing a person from a panel of arbitrators;
43

- (3) Establishing procedures for selecting an arbitrator not inconsistent with these rules or local court rules; and
- (4) Reviewing the administration and operation of the arbitration program periodically and making recommendations to the Judicial Council as it deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

Rule ~~3.814.1604~~. Panels of arbitrators

(a) Creation of panels

Every court must have a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(b) Composition of panels

The panels of arbitrators must be composed of active or inactive members of the State Bar, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, and retired judges. A former California judicial officer is not eligible for the panel of arbitrators unless he or she is an active or inactive member of the State Bar.

(c) Responsibilities of ADR committee

The ADR committee is responsible for determining the size and composition of each panel of arbitrators. The personal injury panel, to the extent feasible, must contain an equal number of those who usually represent plaintiffs and those who usually represent defendants.

(d) Service on panel

Each person appointed serves as a member of a panel of arbitrators at the pleasure of the ADR committee. A person may be on arbitration panels in more than one county. An appointment to a panel is effective when the person appointed:

- (1) Agrees to serve;
- (2) Certifies that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules; and
- (3) Files an oath or affirmation to justly try all matters submitted to him or her.

1
2 **(e) Panel lists**

3
4 Lists showing the names of panel arbitrators available to hear cases must be
5 available for public inspection in the ADR ~~program~~ administrator's office.
6

7 **Rule 3.815.1605. Selection of the arbitrator**

8
9 **(a) Selection by stipulation**

10
11 By stipulation, the parties may select any person to serve as arbitrator. If the parties
12 select a person who is not on the court's arbitration panel to serve as the arbitrator,
13 the stipulation will be effective only if:
14

- 15 (1) The selected person completes a written consent to serve and the oath required
16 of panel arbitrators under these rules; and
17
18 (2) Both the consent and the oath are attached to the stipulation.
19

20 A stipulation may specify the maximum amount of the arbitrator's award. The
21 stipulation to an arbitrator must be served and filed no later than 10 days after the
22 case has been set for arbitration under rule ~~4602~~ 3.812.
23

24 **(b) Selection absent stipulation or local procedures**

25
26 If the arbitrator has not been selected by stipulation and the court has not adopted
27 local rules or procedures for the selection of the arbitrator as permitted under (c),
28 the arbitrator will be selected as follows:
29

- 30 (1) Within 15 days after a case is set for arbitration under rule ~~4602~~ 3.812, the
31 administrator must determine the number of clearly adverse sides in the case;
32 in the absence of a cross-complaint bringing in a new party, the administrator
33 may assume there are two sides. A dispute as to the number or identity of
34 sides must be decided by the presiding judge in the same manner as disputes
35 in determining sides entitled to peremptory challenges of jurors.
36
37 (2) The administrator must select at random a number of names equal to the
38 number of sides, plus one-, and mail ~~(3)~~ the list of randomly selected names
39 ~~must be mailed~~ to counsel for the parties-, and
40
41 (3) Each side has 10 days from the date of mailing to file a rejection, in writing, of
42 no more than one name on the list; if there are two or more parties on a side,
43 they must join in the rejection of a single name.

1
2 (4) Promptly on the expiration of the 10-day period, the administrator must
3 appoint, at random, one of the persons on the list whose name was not
4 rejected, if more than one name remains.

5
6 (5) The administrator must assign the case to the arbitrator appointed and must
7 give notice of the appointment to the arbitrator and to all parties.
8

9 **(c) Local selection procedures**

10
11 ~~In lieu~~ Instead of the procedure in (b), a court that has an arbitration program may,
12 by local rule or by procedures adopted by its ADR committee, establish any fair
13 method of selecting an arbitrator that:

14
15 (1) Affords each side an opportunity to challenge at least one listed arbitrator
16 peremptorily; and
17

18 (2) Ensures that an arbitrator is appointed within 30 days from the submission of a
19 case to arbitration.
20

21 The local rule or procedure may require that all steps leading to the selection of the
22 arbitrator take place during or immediately following the case management
23 conference or review under ~~rule 212~~ the rules on case management in division 7 of
24 this title at which the court determines the amount in controversy and the suitability
25 of the case for arbitration.
26

27 **(d) Procedure if first arbitrator declines to serve**

28
29 If the first arbitrator selected declines to serve, the administrator must vacate the
30 appointment of the arbitrator and may either:

31
32 (1) Return the case to the top of the arbitration hearing list, restore the arbitrator's
33 name to the list of those available for selection to hear cases, and appoint a
34 new arbitrator; or
35

36 (2) Certify the case to the court.
37

38 **(e) Procedure if second arbitrator declines to serve or hearing is not timely held**

39
40 If the second arbitrator selected declines to serve or if the arbitrator does not
41 complete the hearing within 90 days after the date of the assignment of the case to
42 him or her, including any time due to continuances granted under rule ~~408~~ 3.818,
43 the administrator must certify the case to the court.

1
2 **(f) Cases certified to court**
3

4 If a case is certified to the court under either (d) or (e), the court must ~~summon the~~
5 ~~parties or their counsel~~ hold a case management conference. If the inability to hold
6 ~~a an arbitration~~ hearing is due to the neglect or lack of cooperation of a party who
7 ~~elected or stipulated for to arbitration, the case must be removed from the~~
8 ~~arbitration hearing list and restored to the civil active list~~ the court may set the case
9 for trial and may make any other appropriate orders. In all other circumstances,
10 ~~cases may be~~ the court may ordered reassign the case ~~reassigned for to arbitration;~~
11 ~~or the court may~~ make any other appropriate orders to expedite disposition of the
12 case.
13

14 **Rule 3.816.1606. Disqualification for conflict of interest**
15

16 **(a) Arbitrator's duty to disqualify himself or herself**
17

18 The arbitrator must determine whether any cause exists for disqualification upon
19 any of the grounds set forth in Code of Civil Procedure section 170.1 ~~of the Code of~~
20 ~~Civil Procedure~~ governing the disqualification of judges. If any member of the
21 arbitrator's law firm would be disqualified under subdivision (a)(2) of section
22 170.1, the arbitrator is disqualified. Unless the ground for disqualification is
23 disclosed to the parties in writing and is expressly waived by all parties in writing,
24 the arbitrator must promptly notify the administrator of any known ground for
25 disqualification and another arbitrator must be selected as provided in rule ~~1605~~
26 3.815 .
27

28 **(b) Disclosures by arbitrator**
29

30 In addition to any other disclosure required by law, no later than five days ~~prior to~~
31 before the deadline for parties to file a motion for disqualification of the arbitrator
32 under Code of Civil Procedure section 170.6 or, if the arbitrator is not aware of his
33 or her appointment or of a matter subject to disclosure at that time, as soon as
34 practicable thereafter, an arbitrator must disclose to the parties:
35

- 36 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of
37 canon 6 of the Code of Judicial Ethics; and
38
39 (2) Any significant personal or professional relationship the arbitrator has or has
40 had with a party, attorney, or law firm in the instant case, including the
41 number and nature of any other proceedings in the past 24 months in which
42 the arbitrator has been privately compensated by a party, attorney, law firm, or
43 insurance company in the instant case for any services, including, ~~but not~~

1 ~~limited to,~~ service as an attorney, expert witness, or consultant or as a judge,
2 referee, arbitrator, mediator, settlement facilitator, or other alternative dispute
3 resolution neutral.
4

5 **(c) Request for disqualification**
6

7 A copy of any request by a party for the disqualification of an arbitrator ~~pursuant to~~
8 under Code of Civil Procedure sections 170.1 or 170.6 of the Code of Civil
9 Procedure must be sent to the ADR administrator.
10

11 **(d) Arbitrator's failure to disqualify himself or herself**
12

13 Upon motion of any party, made as promptly as possible under Code of Civil
14 Procedure sections 170.1 and 1141.18(d) ~~of the Code of Civil Procedure~~ and before
15 the conclusion of arbitration proceedings, the appointment of an arbitrator to a case
16 must be vacated if the court finds that:
17

18 (1) The party has demanded that the arbitrator disqualify himself or herself;
19

20 (2) The arbitrator has failed to do so; and
21

22 (3) Any of the grounds specified in section 170.1 exists.
23

24 The ADR administrator must return the case to the top of the arbitration hearing list
25 and ~~must~~ appoint a new arbitrator. The disqualified arbitrator's name must be
26 returned to the list of those available for selection to hear cases, unless the court
27 orders that the circumstances of the disqualification be reviewed by the ADR
28 administrator, the ADR committee, or the presiding judge, ~~or a judge designated by~~
29 ~~the presiding judge~~, for appropriate action.
30

31 **Rule ~~3.817.1607.~~ 3.817.1607. Arbitration hearings; notice; when and where held**
32

33 **(a) Setting hearing; notice**
34

35 Within 15 days after the appointment of the arbitrator, the arbitrator must set the
36 time, date, and place of the arbitration hearing and notify each party and the
37 administrator in writing of the time, date, and place set.
38

39 **(b) Date of hearing; limitations**
40

41 Except upon the agreement of all parties and the arbitrator, the arbitration hearing
42 date must not be set:
43

(1) Earlier than 30 days after the date the arbitrator sends the notice of the hearing under (a); or

(2) On Saturdays, Sundays, or legal holidays.

(c) Hearing completion deadline

The hearing must be scheduled so as to be completed no later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances granted under rule ~~1608~~ 3.818.

(d) Hearing location

The hearing must take place in appropriate facilities provided by the court or selected by the arbitrator.

Rule ~~3.818.1608~~ 3.818. Continuanances

(a) Stipulation to continuance; consent of arbitrator

Except as provided in (c), the parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. An arbitrator must consent to a request for a continuance if it appears that good cause exists. Notice of the continuance must be sent to the ADR administrator.

(b) Court grant of continuance

If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown ~~under the standards recommended in section 9 of the Standards of Judicial Administration~~, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance must notify the arbitrator and the arbitrator must reschedule the hearing, giving notice to all parties to the arbitration proceeding.

(c) Limitation on length of continuance

An arbitration hearing must not be continued to a date later than 90 days after the assignment of the case to the arbitrator, including any time due to continuances granted under this rule, except by order of the court upon the motion of a party as provided in (b).

(Reviser's note: Subdivision (b) has been modified to reflect that section 9 of the Standards of Judicial Administration has been repealed.)

1
2 **Rule ~~3.819.1609~~. Arbitrator's fees**

3
4 **(a) Filing of award or notice of settlement required**

5
6 The arbitrator's award must be timely filed with the clerk of the court under rule
7 ~~4.615(b)~~ 3.825(b) or a notice of settlement must have been filed before a fee may be
8 paid to the arbitrator.
9

10 **(b) Exceptions for good cause**

11
12 On the arbitrator's verified ex parte application, the court may for good cause
13 authorize payment of a fee:
14

- 15 (1) If the arbitrator devoted a substantial amount of time to a case that was settled
16 without a hearing; or
17
18 (2) If the award was not timely filed.
19

20 **(c) Arbitrator's fee statement**

21
22 The arbitrator's fee statement must be submitted to the administrator promptly upon
23 the completion of the arbitrator's duties, and must set forth the title and number of
24 the cause arbitrated, the date of the arbitration hearing, and the date the award or
25 settlement was filed.
26

27 **Rule ~~3.820.1610~~. Communication with the arbitrator**

28
29 **(a) Disclosure of settlement offers prohibited**

30
31 No disclosure of any offers of settlement made by any party may be made to the
32 arbitrator prior to the filing of the award.
33

34 **(b) Ex parte communication prohibited**

35
36 An arbitrator must not initiate, permit, or consider any ex parte communications or
37 consider other communications made to the arbitrator outside the presence of all of
38 the parties concerning a pending or impending arbitration, except as follows:
39

- 40 (1) An arbitrator may communicate with a party in the absence of other parties
41 about administrative matters, such as setting the time and place of hearings or
42 making other arrangements for the conduct of the proceedings, as long as the
43 arbitrator reasonably believes that the communication will not result in a

procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

- (2) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.

Rule ~~3.821.1611~~. Representation by counsel; proceedings when party absent

(a) Representation by counsel

A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

(b) Proceedings when party absent

The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award must not be based solely upon the absence of a party. In the event of a default by defendant, the arbitrator must require the plaintiff to submit such evidence as may be appropriate for the making of an award.

Rule ~~3.822.1612~~. Discovery

(a) Right to discovery

The parties to the arbitration have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and are subject to all of the same duties, liabilities, and obligations as provided in part 4, title 3, chapter 3 of the Code of Civil Procedure, except ~~that~~ as provided in (b).

(b) Completion of discovery

All discovery must be completed not later than 15 days ~~prior to~~ before the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed.

Rule ~~3.823.1613~~. Rules of evidence at arbitration hearing

1 **(a) Presence of arbitrator and parties**

2
3 All evidence must be taken in the presence of the arbitrator and all parties, except
4 where any of the parties has waived the right to be present or is absent after due
5 notice of the hearing.

6
7 **(b) Application of civil rules of evidence**

8
9 The rules of evidence governing civil cases apply to the conduct of the arbitration
10 hearing, except:

11
12 (1) Written reports and other documents

13
14 Any party may offer written reports of any expert witness, medical records
15 and bills (including physiotherapy, nursing, and prescription bills),
16 documentary evidence of loss of income, property damage repair bills or
17 estimates, police reports concerning an accident which gave rise to the case,
18 other bills and invoices, purchase orders, checks, written contracts, and similar
19 documents prepared and maintained in the ordinary course of business.

20
21 (A) The arbitrator must receive them in evidence if copies have been
22 delivered to all opposing parties at least 20 days ~~prior to~~ before the
23 hearing.

24
25 (B) Any other party may subpoena the author or custodian of the document
26 as a witness and examine the witness as if under cross-examination.

27
28 (C) Any repair estimate offered as an exhibit, and the copies delivered to
29 opposing parties, must be accompanied by :

30
31 (i) ~~By A~~ statement indicating whether or not the property was
32 repaired, and, if it was, whether the estimated repairs were made in
33 full or in part; ~~and~~

34
35 (ii) ~~By A~~ copy of the receipted bill showing the items of repair made
36 and the amount paid.

37
38 (D) The arbitrator must not consider any opinion as to ultimate fault
39 expressed in a police report.

40
41 (2) Witness statements

1 The written statements of any other witness may be offered and must be
2 received in evidence if:

- 3
4 (A) They are made ~~by affidavit or~~ by declaration under penalty of perjury;
5
6 (B) Copies have been delivered to all opposing parties at least 20 days ~~prior~~
7 to before the hearing; and
8
9 (C) No opposing party has, at least 10 days before the hearing, delivered to
10 the proponent of the evidence a written demand that the witness be
11 produced in person to testify at the hearing. The arbitrator must disregard
12 any portion of a statement received ~~pursuant to~~ under his rule that would
13 be inadmissible if the witness were testifying in person, but the inclusion
14 of inadmissible matter does not render the entire statement inadmissible.
15

16 (3) Depositions
17

- 18 (A) The deposition of any witness may be offered by any party and must be
19 received in evidence, subject to objections available under Code of Civil
20 Procedure section 2025(g), notwithstanding that the deponent is not
21 “unavailable as a witness” within the meaning of section 240 of the
22 Evidence Code section 240 and no exceptional circumstances exist, if:
23
24 (i) The deposition was taken in the manner provided for by law or by
25 stipulation of the parties and within the time provided for in these
26 rules; and
27
28 (ii) Not less than 20 days ~~prior to~~ before the hearing the proponent of
29 the deposition delivered to all opposing parties notice of intention
30 to offer the deposition in evidence.
31
32 (B) The opposing party, upon receiving the notice, may subpoena the
33 deponent and, at the discretion of the arbitrator, either the deposition
34 may be excluded from evidence or the deposition may be admitted and
35 the deponent may be further cross-examined by the subpoenaing party.
36 These limitations are not applicable to a deposition admissible under the
37 terms of ~~section 2025(u) of the~~ Code of Civil Procedure section 2025(u).
38

39 (c) **Subpoenas**
40

41 (1) Compelling witnesses to appear
42

43 The attendance of witnesses at arbitration hearings may be compelled through

1 the issuance of subpoenas as provided in the Code of Civil Procedure, in
2 section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It is the duty of
3 the party requesting the subpoena to modify the form of subpoena so as to
4 show that the appearance is before an arbitrator; and to give the time and place
5 set for the arbitration hearing.
6

7 (2) Adjournment or continuances
8

9 At the discretion of the arbitrator, nonappearance of a properly subpoenaed
10 witness may be a ground for an adjournment or continuance of the hearing.
11

12 (3) Contempt
13

14 If any witness properly served with a subpoena fails to appear at the
15 arbitration hearing or, having appeared, refuses to be sworn or to answer,
16 proceedings to compel compliance with the subpoena on penalty of contempt
17 may be had before the superior court as provided in Code of Civil Procedure
18 section 1991 for other instances of refusal to appear and answer before an
19 officer or commissioner out of court.
20

21 (d) **Delivery of documents**
22

23 For purposes of this rule, “delivery” of a document or notice may be accomplished
24 manually or by mail in the manner provided by Code of Civil Procedure section
25 1013. If service is by mail, the times prescribed in this rule for delivery of
26 documents, notices, and demands are increased by five days.
27

28 **Rule ~~3.824.1614~~ 3.824.1614. Conduct of the hearing**
29

30 (a) **Arbitrator’s powers**
31

32 The arbitrator has the following powers; all other questions arising out of the case
33 are reserved to the court:
34

- 35 (1) To administer oaths or affirmations to witnesses;
36
37 (2) To take adjournments upon the request of a party or upon his or her own
38 initiative when deemed necessary;
39
40 (3) To permit testimony to be offered by deposition;
41
42 (4) To permit evidence to be offered and introduced as provided in these rules;
43

- (5) To rule upon the admissibility and relevancy of evidence offered;
- (6) To invite the parties, on reasonable notice, to submit ~~trial~~ arbitration briefs;
- (7) To decide the law and facts of the case and make an award accordingly;
- (8) To award costs, not to exceed the statutory costs of the suit; and
- (9) To examine any site or object relevant to the case.

(b) Record of proceedings

(1) Arbitrator's record

The arbitrator may, but is not required to, make a record of the proceedings.

(2) Record not subject to discovery

Any records of the proceedings made by or at the direction of the arbitrator are deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator must not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury.

(3) No other record

No other record may be made, and the arbitrator must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by (1).

Rule 3.825.1615. ~~The award; entry as judgment; motion to vacate~~

(a) ~~The award; Form and content~~ of the award

(1) Award in writing

The award must be in writing and signed by the arbitrator. It must determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate.

1 (2) No findings or conclusions required

2
3 The arbitrator is not required to make findings of fact or conclusions of law.
4

5 **(b) Filing the award or amended award**

6
7 (1) Time for filing the award
8

9 Within 10 days after the conclusion of the arbitration hearing, the arbitrator
10 must file the award with the clerk, with proof of service on each party to the
11 arbitration. On the arbitrator's application in cases of unusual length or
12 complexity, the court may allow up to 20 additional days for the filing and
13 service of the award.
14

15 (2) Amended award
16

17 Within the time for filing the award, the arbitrator may file and serve an
18 amended award.
19

20 **(c) ~~Entry of award as judgment~~**

21
22 ~~(1) The clerk must enter the award as a judgment forthwith upon the expiration of~~
23 ~~30 days after the award is filed if no party has, during that period, served and~~
24 ~~filed a request for trial as provided in these rules.~~
25

26 ~~(2) Promptly upon entry of the award as a judgment the clerk must mail notice of~~
27 ~~entry of judgment to all parties who have appeared in the case and must~~
28 ~~execute a certificate of mailing and place it in the court's file in the case.~~
29

30 ~~(3) The judgment so entered has the same force and effect in all respects as, and is~~
31 ~~subject to all provisions of law relating to, a judgment in a civil case or~~
32 ~~proceeding, except that it is not subject to appeal and it may not be attacked or~~
33 ~~set aside except as provided in (d). The judgment so entered may be enforced~~
34 ~~as if it had been rendered by the court in which it is entered.~~
35

36 **(d) ~~Vacating award~~**

37
38 ~~(1) A party against whom a judgment is entered pursuant to an arbitration award~~
39 ~~may, within six months after its entry, move to vacate the judgment on the~~
40 ~~ground that the arbitrator was subject to a disqualification not disclosed before~~
41 ~~the hearing and of which the arbitrator was then aware, or upon one of the~~
42 ~~grounds set forth in section 473 or subdivisions (a)(1), (2), and (3) of section~~
43 ~~1286.2 of the Code of Civil Procedure, and upon no other grounds.~~

(2) ~~The motion must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.~~

(Reviser's note: Subdivisions (c) and (d) have been relocated to new rules 3.827 and 3.828.)

Rule ~~3.826.1616~~ 3.826. Trial after arbitration

(a) Request for trial; deadline

Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. A request for trial filed after the parties have been served with a copy of the award by the arbitrator, but before the award has been filed with the clerk, ~~shall be deemed~~ is valid and timely filed. The 30-day period within which to request trial may not be extended.

(b) ~~Restoring case to civil active list~~ Prosecution of the case

~~The case must be restored to the civil active list for prompt disposition, in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause. If a party makes a timely request for a trial, the case must proceed as provided under an applicable case management order. If no pending order provides for the prosecution of the case after a request for a trial after arbitration, the court must promptly schedule a case management conference.~~

(c) References to arbitration during trial prohibited

The case must be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(d) Costs after trial

In assessing costs after the trial, the court must apply the standards specified in ~~section 1141.21 of the Code of Civil Procedure~~ section 1141.21.

(Reviser's note: Subdivision (b) has been revised to be consistent with recent amendments to the rules on civil case management.)

Rule 3.827. Entry of award as judgment

(a) Entry of award as judgment by clerk

The clerk must enter the award as a judgment immediately upon the expiration of 30 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules.

(b) Notice of entry of judgment

Promptly upon entry of the award as a judgment, the clerk must mail notice of entry of judgment to all parties who have appeared in the case and must execute a certificate of mailing and place it in the court's file in the case.

(c) Effect of judgment

The judgment so entered has the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil case or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in rule 3.828. The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(Reviser's note: This rule is based on current rule 1615(c).)

Rule 3.828. Vacating judgment on award

(a) Motion to vacate

A party against whom a judgment is entered under an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in Code of Civil Procedure sections 473 or 1286.2(a)(1), (2), and (3), and upon no other grounds.

(b) Notice and grounds for granting motion

The motion must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds

1 alleged are true, and that the motion was made as soon as practicable after the
2 moving party learned of the existence of those grounds.

3
4 **(Reviser's note: This rule is based on current rule 1615(d).)**

5
6 **Rule 3.829.1618. Settlement of case**

7
8 If a case is settled, each plaintiff or other party seeking affirmative relief must notify the
9 arbitrator and the court as required in rule ~~225~~ 3.1385 .

10
11 **Rule 3.830.1617. Arbitration not pursuant to rules**

12
13 These rules do not prohibit the parties to any civil case or proceeding from entering into
14 arbitration agreements pursuant to part 3, title 9 of the Code of Civil Procedure. Neither
15 the ADR committee nor the ADR administrator may take any part in the conduct of an
16 arbitration under an agreement not in conformity with these rules except that the
17 administrator may, upon joint request of the parties, furnish the parties to the agreement
18 with a randomly selected list of at least three names of members of the appropriate panel
19 of arbitrators.

20
21 **Chapter 3. General Rules Relating to Mediation of Civil Cases**

22
23 **Article 1. [Reserved]**

24
25 **Article 2. Rules of Conduct for Mediators in Court-Connected Mediation Programs**
26 **for Civil Cases**

27
28 **Rule 3.850.1620. Purpose and function**

29
30 **(a) Standards of conduct**

31
32 The rules in this ~~part~~ article establish the minimum standards of conduct for
33 mediators in court-connected mediation programs for general civil cases. These
34 rules are intended to guide the conduct of mediators in these programs, to inform
35 and protect participants in these mediation programs, and to promote public
36 confidence in the mediation process and the courts. For mediation to be effective,
37 there must be broad public confidence in the integrity and fairness of the process.
38 Mediators in court-connected programs are responsible to the parties, the public,
39 and the courts for conducting themselves in a manner that merits that confidence.

40
41 **(b) Scope and limitations**

42
43 These rules are not intended to:

- (1) Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;
- (2) Create a basis for challenging a settlement agreement reached in connection with mediation; or
- (3) Create a basis for a civil cause of action against a mediator.

Rule ~~3.851.1620.1~~ Application

(a) Circumstances applicable

The rules in this ~~part~~ article apply to mediations in which a mediator:

- (1) Has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program; and
- (2) Has agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program.

(b) Application to listed fees

If a court's panel or list includes firms that provide mediation services, all mediators affiliated with a listed firm are required to comply with the rules in this ~~part~~ article when they are notified by the court or the parties that the firm was selected from the court list to mediate a general civil case within that court's mediation program.

(c) Time of applicability

Except as otherwise provided in these rules, the rules in this ~~part~~ article apply from the time the mediator agrees to mediate a case until the end of the mediation in that case.

(d) Inapplicability to judges

The rules in this ~~part~~ article do not apply to judges or other judicial officers while they are serving in a capacity in which they are governed by the Code of Judicial Ethics.

1
2 **(e) Inapplicability to settlement conferences**

3
4 The rules in this ~~part~~ article do not apply to settlement conferences conducted under
5 rule ~~222~~ 3.1380 ~~of the California Rules of Court.~~

6
7 **Advisory Committee Comment**

8
9 **Subdivision (d).** Although these rules do not apply to them, judicial officers who serve as mediators in
10 their courts' mediation programs are nevertheless encouraged to be familiar with and observe these rules
11 when mediating, particularly the rules concerning subjects not covered in the Code of Judicial Ethics such
12 as voluntary participation and self-determination.

13
14 **Rule ~~3.852.1620.2.~~ Definitions**

15
16 As used in this ~~part~~ article, unless the context or subject matter ~~otherwise~~ requires
17 otherwise:

18
19 **(a) (1) ~~[Mediation]~~** “Mediation” means a process in which a neutral person or
20 persons facilitate communication between the disputants to assist them in reaching a
21 mutually acceptable agreement.

22
23 **(b) (2) ~~[Mediator]~~** “Mediator” means a neutral person who conducts a mediation.

24
25 **(c) (3) ~~[Participant]~~** “Participant” means any individual, entity, or group, other than
26 the mediator taking part in a mediation, including but not limited to attorneys for
27 the parties.

28
29 **(d) (4) ~~[Party]~~** “Party” means any individual, entity, or group taking part in a
30 mediation who is a plaintiff, a defendant, a cross-complainant, a cross-defendant, a
31 petitioner, a respondent, or an intervenor in the case.

32
33 **Advisory Committee Comment**

34
35 ~~Subdivision (b).~~ This The definition of “mediator” in this rule departs from the definition of “mediator” in
36 Evidence Code section 1115(b) in that it does not include persons designated by the mediator to assist in
37 the mediation or to communicate with a participant in preparation for the mediation. However, these
38 definitions are applicable only to these rules of conduct and do not limit or expand mediation
39 confidentiality under the Evidence Code or other law.

40
41 ~~Subdivision (c).~~ The definition of “participant” includes insurance adjusters, experts, and consultants as
42 well as the parties and their attorneys.

43
44 **Rule ~~3.853.1620.3.~~ Voluntary participation and self-determination**

1 A mediator must conduct the mediation in a manner that supports the principles of
2 voluntary participation and self-determination by the parties. For this purpose a mediator
3 must:

4
5 ~~(a)~~ (1) Inform the parties, at or before the outset of the first mediation session, that
6 any resolution of the dispute in mediation requires a voluntary agreement of the
7 parties;

8
9 ~~(b)~~ (2) Respect the right of each participant to decide the extent of his or her
10 participation in the mediation, including the right to withdraw from the mediation at
11 any time; and

12
13 ~~(c)~~ (3) Refrain from coercing any party to make a decision or to continue to
14 participate in the mediation.

15
16 **Advisory Committee Comment**

17
18 Voluntary participation and self-determination are fundamental principles of mediation that apply both to
19 mediations in which the parties voluntarily elect to mediate and to those in which the parties are required
20 to go to mediation in a mandatory court mediation program or by court order. Although the court may
21 order participants to attend mediation, a mediator may not mandate the extent of their participation in the
22 mediation process or coerce any party to settle the case.

23
24 After informing the parties of their choices and the consequences of those choices, a mediator can invoke
25 a broad range of approaches to assist the parties in reaching an agreement without offending the principles
26 of voluntary participation and self-determination, including (1) encouraging the parties to continue
27 participating in the mediation when it reasonably appears to the mediator that the possibility of reaching
28 an uncoerced, consensual agreement has not been exhausted and (2) suggesting that a party consider
29 obtaining professional advice (for example, informing an unrepresented party that he or she may consider
30 obtaining legal advice). Conversely, examples of conduct that violate the principles of voluntary
31 participation and self-determination include coercing a party to continue participating in the mediation
32 after the party has told the mediator that he or she wishes to terminate the mediation, providing an opinion
33 or evaluation of the dispute in a coercive manner or over the objection of the parties, using abusive
34 language, and threatening to make a report to the court about a party's conduct at the mediation.

35
36 **Rule ~~3.854.1620.4~~ Confidentiality**

37
38 **(a) Compliance with confidentiality law**

39
40 A mediator must, at all times, comply with the applicable law concerning
41 confidentiality.

42
43 **(b) Informing participants of confidentiality**

At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.

(c) Confidentiality of separate communications; caucuses

If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of the other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information.

(d) Use of confidential information

A mediator must not use information that is acquired in confidence in the course of a mediation outside the mediation or for personal gain.

Advisory Committee Comment

Subdivision (a). The general law concerning mediation confidentiality is found in Evidence Code sections 703.5 and 1115–1128 and in cases interpreting those sections. (See, e.g., *Foxgate Homeowners' Association, Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1; *Rinaker v. Superior Court* (1998) 62 Cal.App.4th 155; and *Gilbert v. National Corp. for Housing Partnerships* (1999) 71 Cal.App.4th 1240.)

Rule ~~3.855.1620.5~~ 3.855.1620.5. Impartiality, conflicts of interest, disclosure, and withdrawal

(a) Impartiality

A mediator must maintain impartiality toward all participants in the mediation process at all times.

(b) Disclosure of matters potentially affecting impartiality

(1) A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties. These matters include, but are not limited to:

(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

(B) The existence of any grounds for disqualification of a judge specified in Code of Civil Procedure section 170.1.

- (2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

(c) Proceeding if there are no objections or questions concerning impartiality

Except as provided in ~~subdivision (f) below~~, if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

(d) Responding to questions or concerns concerning impartiality

If, after a mediator makes disclosures or at any other point in the mediation process, a participant raises a question or concern about the mediator's ability to conduct the mediation impartially, the mediator must address the question or concern with the participants. Except as provided in ~~subdivision (f)~~, if, after the question or concern is addressed, no party objects to the mediator, the mediator may proceed.

(e) Withdrawal or continuation upon party objection concerning impartiality

In a two-party mediation, if any party objects to the mediator after the mediator makes disclosures or discusses a participant's question or concern regarding the mediator's ability to conduct the mediation impartially, the mediator must withdraw. In a mediation in which there are more than two parties, the mediator may continue the mediation with the nonobjecting parties, provided that doing so would not violate any other provision of these rules, any law, or any local court rule or program guideline.

(f) Circumstances requiring mediator recusal despite party consent

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if:

- (1) The mediator cannot maintain impartiality toward all participants in the mediation process; or

- 1 (2) Proceeding with the mediation would jeopardize the integrity of the court or of
2 the mediation process.

3
4 **Advisory Committee Comment**
5

6 **Subdivision (b).** This subdivision is intended to provide parties with information they need to help them
7 determine whether a mediator can conduct the mediation impartially. A mediator’s overarching duty
8 under this subdivision is to make a “reasonable effort” to identify matters that, in the eyes of a reasonable
9 person, could raise a question about the mediator’s ability to conduct the mediation impartially, and to
10 inform the parties about those matters. What constitutes a “reasonable effort” to identify such matters
11 varies depending on the circumstances, including whether the case is scheduled in advance or received on
12 the spot, and the information about the participants and the subject matter that is provided to the mediator
13 by the court and the parties.

14
15 The interests, relationships, and affiliations that a mediator may need to disclose under ~~subdivision~~
16 (b)(1)(A) include but are not limited to: (1) prior, current, or currently expected service as a mediator in
17 another mediation involving any of the participants in the present mediation; (2) prior, current, or
18 currently expected business relationships or transactions between the mediator and any of the participants;
19 and (3) the mediator’s ownership of stock or any other significant financial interest involving any
20 participant in the mediation. Currently expected interests, relationships, and affiliations may include, for
21 example, an intention to form a partnership or to enter into a future business relationship with one of the
22 participants in the mediation.

23
24 Although ~~subdivision~~ (b)(1) specifies interests, relationships, affiliations, and matters that are grounds for
25 disqualification of a judge under Code of Civil Procedure section 170.1, these are only examples of
26 common matters that reasonably could raise a question about a mediator’s ability to conduct the
27 mediation impartially and, thus, must be disclosed. The absence of particular interests, relationships,
28 affiliations, and section 170.1 matters does not necessarily mean that there is no matter that could
29 reasonably raise a question about the mediator’s ability to conduct the mediation impartially. A mediator
30 must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for
31 disclosure under ~~subdivision~~ (b)(1).

32
33 Attorney mediators should be aware that under the section 170.1 standard, they may need to make
34 disclosures when an attorney in their firm is serving or has served as a lawyer for any of the parties in the
35 mediation. Section 170.1 does not specifically address whether a mediator must disclose when another
36 member of the mediator’s dispute resolution services firm is providing or has provided services to any of
37 the parties in the mediation. Therefore, a mediator must evaluate such circumstances under the general
38 criteria for disclosure under ~~subdivision~~ (b)(1)—that is, is it a matter that, in the eyes of a reasonable
39 person, could raise a question about the mediator’s ability to conduct the mediation impartially?
40

41 If there is a conflict between the mediator’s obligation to maintain confidentiality and the mediator’s
42 obligation to make a disclosure, the mediator must determine whether he or she can make a general
43 disclosure of the circumstance without revealing any confidential information, or must decline to serve.
44

45 **Rule ~~3.856.1620.6~~ 3.856.1620.6. Competence**
46

47 **(a) Compliance with court qualifications**
48

1 A mediator must comply with experience, training, educational, and other
2 requirements established by the court for appointment and retention.

3
4 **(b) Truthful representation of background**

5
6 A mediator has a continuing obligation to truthfully represent his or her background
7 to the court and participants. Upon a request by any party, a mediator must provide
8 truthful information regarding his or her experience, training, and education.

9
10 **(c) Informing court of public discipline and other matters**

11
12 A mediator must also inform the court if:

- 13
14 (1) Public discipline has been imposed on the mediator by any public disciplinary
15 or professional licensing agency;
16
17 (2) The mediator has resigned his or her membership in the State Bar or another
18 professional licensing agency while disciplinary or criminal charges were
19 pending;
20
21 (3) A felony charge is pending against the mediator;
22
23 (4) The mediator has been convicted of a felony or of a misdemeanor involving
24 moral turpitude; or
25
26 (5) There has been an entry of judgment against the mediator in any civil action
27 for actual fraud or punitive damages.

28
29 **(d) Assessment of skills; withdrawal**

30
31 A mediator has a continuing obligation to assess whether or not his or her level of
32 skill, knowledge, and ability is sufficient to conduct the mediation effectively. A
33 mediator must decline to serve or withdraw from the mediation if the mediator
34 determines that he or she does not have the level of skill, knowledge, or ability
35 necessary to conduct the mediation effectively.

36
37 **Advisory Committee Comment**

38
39 **Subdivision (d).** No particular advanced academic degree or technical or professional experience is a
40 prerequisite for competence as a mediator. Core mediation skills include communicating clearly, listening
41 effectively, facilitating communication among all participants, promoting exploration of mutually
42 acceptable settlement options, and conducting oneself in a neutral manner.

A mediator must consider and weigh a variety of issues in order to assess whether his or her level of skill, knowledge, and ability is sufficient to make him or her effective in a particular mediation. Issues include whether the parties (1) were involved or had input in the selection of the mediator; (2) had access to information about the mediator's background or level of skill, knowledge, and ability; (3) have a specific expectation or perception regarding the mediator's level of skill, knowledge, and ability; (4) have expressed a preference regarding the style of mediation they would like or expect; or (5) have expressed a desire to discuss legal or other professional information, to hear a personal evaluation of or opinion on a set of facts as presented, or to be made aware of the interests of persons who are not represented in mediation.

Rule ~~3.857.1620.7~~ 3.853. Quality of mediation process

(a) Diligence

A mediator must make reasonable efforts to advance the mediation in a timely manner. If a mediator schedules a mediation for a specific time period, he or she must keep that time period free of other commitments.

(b) Procedural fairness

A mediator must conduct the mediation proceedings in a procedurally fair manner. "Procedural fairness" means a balanced process in which each party is given an opportunity to participate and make uncoerced decisions. A mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties.

(c) Explanation of process

In addition to the requirements of rule ~~1620.3~~ 3.853 (voluntary participation and self-determination), rule ~~1620.4(a)~~ 3.854(a) (confidentiality), and ~~subdivision~~ (d) of this rule (representation and other professional services), at or before the outset of the mediation the mediator must provide all participants with a general explanation of:

- (1) The nature of the mediation process;
- (2) The procedures to be used; and
- (3) The roles of the mediator, the parties, and the other participants.

(d) Representation and other professional services

A mediator must inform all participants, at or before the outset of the first mediation session, that during the mediation he or she will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial

mediator. Subject to the principles of impartiality and self-determination, a mediator may provide information or opinions that he or she is qualified by training or experience to provide.

(e) Recommending other services

A mediator may recommend the use of other services in connection with a mediation and may recommend particular providers of other services. However, a mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.

(f) Nonparticipants' interests

A mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.

(g) Combining mediation with other ADR processes

A mediator must exercise caution in combining mediation with other alternative dispute resolution (ADR) processes and may do so only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the parties of the general natures of the different processes and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

(h) Settlement agreements

Consistent with ~~subdivision~~ (d), a mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties.

(i) Discretionary termination and withdrawal

A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she suspects that:

- (1) The mediation is being used to further illegal conduct;

(2) A participant is unable to participate meaningfully in negotiations; or

(3) Continuation of the process would cause significant harm to any participant or a third party.

(j) Manner of withdrawal

When a mediator determines that it is necessary to suspend or terminate a mediation or to withdraw, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants.

Advisory Committee Comment

Subdivision (c). The explanation of the mediation process should include a description of the mediator's style of mediation.

Subdivision (d). Subject to the principles of impartiality and self-determination, and if qualified to do so, a mediator may (1) discuss a party's options, including a range of possible outcomes in an adjudicative process; (2) offer a personal evaluation of or opinion on a set of facts as presented, which should be clearly identified as a personal evaluation or opinion; or (3) communicate the mediator's opinion or view of what the law is or how it applies to the subject of the mediation, provided that the mediator does not also advise any participant about how to adhere to the law or on what position the participant should take in light of that opinion.

One question that frequently arises is whether a mediator's assessment of claims, defenses, or possible litigation outcomes constitutes legal advice or the practice of law. Similar questions may arise when accounting, architecture, construction, counseling, medicine, real estate, or other licensed professions are relevant to a mediation. This rule does not determine what constitutes the practice of law or any other licensed profession. A mediator should be cautious when providing any information or opinion related to any field for which a professional license is required, in order to avoid doing so in a manner that may constitute the practice of a profession for which the mediator is not licensed, or in a manner that may violate the regulations of a profession that the mediator is licensed to practice. A mediator should exercise particular caution when discussing the law with unrepresented parties and should inform such parties that they may seek independent advice from a lawyer.

Subdivision (i). Subdivision (i)(2) is not intended to establish any new responsibility or diminish any existing responsibilities that a mediator may have, under the Americans With Disabilities Act or other similar law, to attempt to accommodate physical or mental disabilities of a participant in mediation.

Rule 3.858.1620.8. Marketing

(a) Truthfulness

1 A mediator must be truthful and accurate in marketing his or her mediation services.
2 A mediator is responsible for ensuring that both his or her own marketing activities
3 and any marketing activities carried out on his or her behalf by others comply with
4 this rule.
5

6 **(b) Representations concerning court approval**
7

8 A mediator may indicate in his or her marketing materials that he or she is a
9 member of a particular court's panel or list but, unless specifically permitted by the
10 court, must not indicate that he or she is approved, endorsed, certified, or licensed
11 by the court.
12

13 **(c) Promises, guarantees, and implications of favoritism**
14

15 In marketing his or her mediation services, a mediator must not:
16

- 17 (1) Promise or guarantee results; or
18
19 (2) Make any statement that directly or indirectly implies bias in favor of one
20 party or participant over another.
21

22 **(d) Solicitation of business**
23

24 A mediator must not solicit business from a participant in a mediation proceeding
25 while that mediation is pending.
26

27 **Advisory Committee Comment**
28

29 **Subdivision (d).** This rule is not intended to prohibit a mediator from accepting other employment from a
30 participant while a mediation is pending, provided that there was no express solicitation of this business
31 by the mediator and that accepting that employment does not contravene any other provision of these
32 rules, including the obligations to maintain impartiality, confidentiality, and the integrity of the process. If
33 other employment is accepted from a participant while a mediation is pending, however, the mediator
34 may be required to disclose this to the parties under rule ~~1620.5~~ 3.855.
35

36 This rule also is not intended to prohibit a mediator from engaging in general marketing activities.
37 General marketing activities include, but are not limited to, running an advertisement in a newspaper and
38 sending out a general mailing (either of which may be directed to a particular industry or market).
39

40 **Rule 3.859.~~1620.9~~. Compensation and gifts**
41

42 **(a) Compliance with law**
43

1 A mediator must comply with any applicable requirements concerning
2 compensation established by statute or the court.

3
4 **(b) Disclosure of and compliance with compensation terms**

5
6 Before commencing the mediation, the mediator must disclose to the parties in
7 writing any fees, costs, or charges to be paid to the mediator by the parties. A
8 mediator must abide by any agreement that is reached concerning compensation.

9
10 **(c) Contingent fees**

11
12 The amount or nature of a mediator's fee must not be made contingent upon the
13 outcome of the mediation.

14
15 **(d) Gifts and favors**

16
17 A mediator must not at any time solicit or accept from or give to any participant or
18 affiliate of a participant any gift, bequest, or favor that might reasonably raise a
19 question concerning the mediator's impartiality.

20
21 **Advisory Committee Comment**

22
23 **Subdivision (b).** It is good practice to put mediation fee agreements in writing, and mediators are
24 strongly encouraged to do so; however, nothing in this rule is intended to preclude enforcement of a
25 compensation agreement for mediation services that is not in writing.

26
27 **Subdivision (d).** Whether a gift, bequest, or favor "might reasonably raise a question concerning the
28 mediator's impartiality" must be determined on a case-by-case basis. This subdivision is not intended to
29 prohibit a mediator from accepting other employment from any of the participants, consistent with rule
30 ~~1620.8(d)~~ 3.858(d).

31
32 **Rule ~~3.860.1621~~ 3.860. Attendance sheet and agreement to disclosure**

33
34 **(a) Attendance sheet**

35
36 In each mediation to which these rules apply under rule ~~1620.1(a)~~ 3.851(a), the
37 mediator must request that all participants in the mediation complete an attendance
38 sheet stating their names, mailing addresses, and telephone numbers; retain the
39 attendance sheet for at least two years; and submit it to the court on request

40
41 **(b) Agreement to disclosure**

42
43 The mediator must agree, in each mediation to which these rules apply under rule
44 ~~1620.1(a)~~ 3.851(a), that if an inquiry or a complaint is made about the conduct of

1 the mediator, mediation communications may be disclosed solely for purposes of a
2 complaint procedure conducted pursuant to rule ~~4622~~ 3.865 to address that
3 complaint or inquiry.
4

5 **Rule ~~3.865.1622~~. Complaint procedure required**

6
7 **(a) Court procedures required**

8
9 Each superior court that makes a list of mediators available to litigants in general
10 civil cases or that recommends, selects, appoints, or compensates a mediator to
11 mediate any general civil case pending in the court must establish procedures for
12 receiving, investigating, and resolving complaints that mediators who are on the
13 court's list or who are recommended, selected, appointed, or compensated by the
14 court failed to comply with the rules for conduct of mediators set forth in this ~~part~~
15 article, when applicable.
16

17 **(b) Actions court may take**

18
19 The court may impose additional training requirements on a mediator, reprimand a
20 mediator, remove a mediator from the court's panel or list, or otherwise prohibit a
21 mediator from receiving future mediation referrals from the court if the mediator
22 fails to comply with the rules of conduct for mediators in this ~~part~~ article, when
23 applicable.
24

25 **Advisory Committee Comment**

26
27 Section 16 of the Standards of Judicial Administration sets out recommendations concerning the
28 procedures that a court should use in receiving, investigating, and resolving complaints against
29 commissioners and referees and may serve as guidance in adopting procedures for receiving,
30 investigating, and resolving complaints against mediators.
31

32 **(Reviser's note: This comment should be revised to reflect the repeal of section 16**
33 **and the adoption of new rules relating to complaints.)**
34

35 **Rule ~~3.865.1622.1~~. Designation of person to receive inquiries and complaints**

36
37 In each superior court that is required to establish a complaint procedure under rule
38 ~~4622~~ 3.865, the presiding judge must designate a person who is knowledgeable
39 about mediation to receive and coordinate the investigation of any inquiries or
40 complaints about the conduct of mediators who are subject to rule ~~4622~~ 3.865.
41

42 **Rule ~~3.867.1622.2~~. Confidentiality of complaint procedures, information, and**
43 **records**
44

- 1 (a) This rule’s requirement that rule ~~4622~~ 3.865 complaint procedures be confidential is
2 intended to:
3
- 4 (1) Preserve the confidentiality of mediation communications as required by
5 Evidence Code sections 1115–1128;
6
- 7 (2) Promote cooperation in the reporting, investigation, and resolution of
8 complaints about mediators on court panels; and
9
- 10 (3) Protect mediators against damage to their reputations that might result from
11 unfounded complaints against them.
12
- 13 (b) All procedures for receiving, investigation, and resolving inquiries or complaints
14 about the conduct of mediators must be designed to preserve the confidentiality of
15 mediation communications, including but not limited to the confidentiality of any
16 communications between the mediator and individual mediation participants or
17 subgroups of mediation participants.
18
- 19 (c) All communications, inquiries, complaints, investigations, procedures,
20 deliberations, and decisions about the conduct of a mediator under rule ~~4622~~ 3.865
21 must occur in private and must be kept confidential. No information or records
22 concerning the receipt, investigation, or resolution of an inquiry or a complaint
23 under rule ~~4622~~ 3.865 may be open to the public or disclosed outside the course of
24 the rule ~~4622~~ 3.865 complaint procedure except as provided in (d) or as otherwise
25 required by law.
26
- 27 (d) The presiding judge or a person designated by the presiding judge for this purpose
28 may, in his or her discretion, authorize the disclosure of information or records
29 concerning rule ~~4622~~ 3.865 complaint procedures that do not reveal any mediation
30 communications, including the name of a mediator against whom action has been
31 taken under rule ~~4622~~ 3.865, the action taken, and the general basis on which the
32 action was taken. In determining whether to authorize the disclosure of information
33 or records under this subdivision, the presiding judge or designee should consider
34 the purposes of the confidentiality of rule ~~4622~~ 3.865 complaint procedures stated
35 in (a)(2) and (a)(3).
36

37 **Advisory Committee Comment**

38
39 See Evidence Code sections 1115 and 1119 concerning the scope and types of mediation communications
40 protected by mediation confidentiality.
41

42 **Subdivision (b).** Private meetings, or “caucuses,” between a mediator and subgroups of participants are
43 common in court-connected mediations, and it is frequently understood that these communications will
44 not be disclosed to other participants in the mediation. (See Cal. Rules of Court, rule ~~4620.4~~ 3.864(c).) It

1 is important to protect the confidentiality of these communications in rule ~~1622~~ 3.865 complaint
2 procedures, so that one participants in the mediation does not learn what another participants discussed in
3 confidence with the mediator.
4

5 **Subdivision (c)–(e).** The provisions of (c)–(e) that authorize the disclosure of information and records
6 related to rule ~~1622~~ 3.865 complaint procedures do not create any new exceptions to mediation
7 confidentiality. Information and records about rule ~~1622~~ 3.865 complaint procedures that would reveal
8 mediation communications should only be publicly disclosed consistent with the statutes and case law
9 governing mediation confidentiality.
10

11 Evidence Code sections 915 and 1040 establish procedures and criteria for deciding whether information
12 acquired in confidence by a public employee in the course of his or her duty is subject to disclosure.
13 These sections may be applicable or helpful in determining whether the disclosure of information or
14 records acquired by judicial officers, court staff, and other persons while receiving, investigation, or
15 resolving complaints under rule ~~1622~~ 3.865 is required by law or should be authorized in the discretion of
16 the presiding judge.
17

18 **Rule ~~3.868.1622.3.~~ Disqualification from subsequently serving as an adjudicator**

19

20 A person who has participated in or received information about the receipt, investigation
21 or resolution of an inquiry or a complaint under rule ~~1622~~ 3.865 must not subsequently
22 hear or determine any contested issue of law, fact, or procedure concerning the dispute
23 that was the subject of the underlying mediation or any other dispute that arises from the
24 mediation, as a judge, an arbitrator, a referee, or a juror, or in any other adjudicative
25 capacity, in any court action or proceeding.
26
27

28 **Chapter 4. Civil Action Mediation Program Rules**

29

30 **Rule ~~3.870.1630.~~ Applicability**

31

32 ~~These~~ The rules in this chapter implement the Civil Action Mediation Act, Code of Civil
33 Procedure section 1775 et seq. ~~As provided in~~ Under section 1775.2, they apply in the
34 ~~courts of Los Angeles County~~ Superior Court of California, County of Los Angeles and
35 in other courts that elect to apply the act.
36

37 **Rule ~~3.871.1631.~~ Actions subject to mediation**

38

39 **(a) Actions that may be submitted to mediation**

40

41 The following actions may be submitted to mediation under these provisions:

42 (1) By court order

43

44 Any action in which the amount in controversy, independent of the merits of
45

1 liability, defenses, or comparative negligence, does not exceed \$50,000 for
2 each plaintiff. The court shall determine the amount in controversy ~~pursuant to~~
3 under Code of Civil Procedure section 1775.5. Determinations to send a case
4 to mediation shall be made by the court after consideration of the expressed
5 views of the parties on the amenability of the case to mediation. The court
6 shall not require the parties or other counsel to personally appear in court for a
7 conference held solely to determine whether to send their case to mediation.
8

9 (2) By stipulation

10
11 Any other action, regardless of the amount of controversy, in which all parties
12 stipulate to such mediation. The stipulation must be filed not later than 90
13 days before trial unless the court permits a later time.
14

15 (b) Case-by-case determination

16
17 Amenability of a particular action for mediation ~~shall~~ must be determined on a case-
18 by-case basis, rather than categorically.
19

20 **Rule ~~3.872.1632.~~ Panels of mediators**

21
22 Each court, in consultation with local bar associations, ~~and~~ ADR providers, and
23 associations of providers, ~~shall~~ must identify persons who may be appointed ~~to act as~~
24 mediators. ~~The identification process shall include consideration of the~~ The court must
25 consider the criteria in section 33 standard 10.72 of the Standards of Judicial
26 Administration, and title 16, California Code of Regulations, section 3622, relating to the
27 Dispute Resolution Program Act.
28

29 **Rule ~~3.873.1633.~~ Selection of mediators**

30
31 The parties may stipulate to any mediator, whether or not the person selected is among
32 those identified ~~pursuant to~~ under rule ~~1632~~ 3.872, within 15 days of the date an action is
33 submitted to mediation. If the parties do not stipulate to a mediator, the court ~~shall~~ must
34 promptly assign a mediator to the action from those identified ~~pursuant to~~ under rule
35 ~~1632.~~ 3.872.
36

37 **Rule ~~3.874.1634.~~ Appearance at mediation sessions**

38
39 The parties ~~shall~~ must personally appear at the first mediation session, and at any
40 subsequent session unless excused by the mediator. When ~~the~~ a party is other than a
41 natural person, it ~~shall~~ must appear by a representative with authority to resolve the
42 dispute or, in the case of a governmental entity that requires an agreement to be approved
43 by an elected official or legislative body, by a representative with authority to

1 recommend such agreement. Each party ~~is entitled to~~ may have counsel present at all
2 mediation sessions that concern it, ~~and such~~ Counsel and an insurance representative of a
3 each covered party must also ~~shall~~ be present or available at ~~such~~ all mediation sessions
4 that concern the covered party, unless excused by the mediator.

5
6 **Rule ~~3.875.1635~~. Filing of statement by mediator**

7
8 Within 10 days ~~of the~~ after conclusion of the mediation, the mediator ~~shall~~ must file a
9 statement on Judicial Council form ADR-100, advising the court whether the mediation
10 ended in full agreement or nonagreement as to the entire case or as to particular parties in
11 the case.

12
13 **Rule ~~1636~~. Return of unresolved case to active status**

14
15 ~~It is the duty of the clerk to return a case to active status when it is not entirely resolved~~
16 ~~by mediation. This does not relieve the plaintiff of the obligation to diligently prosecute~~
17 ~~the case.~~

18
19 **(Reviser's note: This rule would be eliminated because it contains an obsolete**
20 **reference to "active status" and is no longer necessary under current case**
21 **management rules and practices.)**

22
23 **Rule ~~3.876.1637~~. Coordination with Trial Court Delay Reduction Act**

24
25 **(a) Effect of mediation on time standards**

26
27 Submission of an action to mediation ~~pursuant to~~ under these the rules in this
28 chapter shall does not affect time periods specified in the Trial Court Delay
29 Reduction Act (Gov. Code, § 68600 et seq.), except as provided in this rule.

30
31 **(b) Exception to delay reduction time standards**

32
33 ~~Upon~~ On written stipulation of the parties filed with the court, ~~there shall be the~~
34 court may order an exception of up to 90 days to the delay reduction time standards
35 to permit mediation of an action. The court must coordinate the timing of the ~~90-~~
36 day exception ~~period shall be coordinated by the court~~ with its delay reduction
37 calendar.

38
39 **(c) Time for completion of mediation**

40
41 Mediation ~~shall~~ must be completed within 60 days of a reference to a mediator, but
42 that period may be extended by the court for up to 30 days on a showing of good
43 cause.

1
2 **(d) Restraint in discovery**

3
4 The parties ~~are urged to~~ should exercise restraint in discovery while a case is in
5 mediation. In appropriate cases, to accommodate that objective, the court may issue
6 a protective order under Code of Civil Procedure section 2017, ~~subdivision (c), and~~
7 related provisions, ~~may be issued to accommodate that objective.~~

8
9 **Rule 3.877.1638. Statistical information**

10
11 **(a) Quarterly information reports**

12
13 Each court ~~shall~~ must submit quarterly to the Judicial Council pertinent information
14 on:

- 15
16 (1) The cost and time savings afforded by mediation;
17
18 (2) as well as information related to The effectiveness of mediation in resolving
19 disputes;
20
21 (3) The information to be reported shall include The number of cases referred to
22 mediation;
23
24 (4) The time cases were in mediation; and
25
26 (5) Whether mediation ended in full agreement or non-agreement as to the entire
27 case or as to particular parties in the case.

28
29 **(b) Submission of reports to the Judicial Council**

30
31 The information ~~shall~~ required by this rule must be submitted to the Judicial
32 Council either on Judicial Council forms ADR-100 and ADR-101 or as an
33 electronic database that includes, at a minimum, all of the information required on
34 these forms. The format of any electronic database used to submit this information
35 ~~shall~~ must be approved by the Administrative Office of the Courts.

36
37 **(b) (c) Parties and mediators to supply information**

38
39 ~~The~~ Each court ~~shall~~ must require parties and mediators, as appropriate, to supply
40 pertinent information for ~~these~~ the reports required under this rule.

41
42 **(e) (d) Alternative reporting method**

1 if the court so requests, it On request, a court may report cases in mediation
2 pursuant to under these the rules in this chapter under the appropriate reporting
3 methods for cases stayed for contractual arbitration.
4

5 **Rule 3.878.1639. Educational material**

6
7 Each court shall make available educational material, adopted by the Judicial Council, or
8 from other sources, describing available ADR processes in the community.
9

10 **Division 9. References**

11
12 **Chapter 1. Reference by Agreement of the Parties Under Code of Civil Procedure**
13 **Section 638**
14

15 (Reviser's note: Rule 244.1 would be repealed and its provisions placed into the
16 separate rules in this chapter.)
17

18 **Rule 244.1. Reference by agreement**

19
20 **(a) Reference pursuant to Code of Civil Procedure section 638**

21
22 ~~A written agreement for an order appointing a referee pursuant to section 638 of the~~
23 ~~Code of Civil Procedure must be presented with a proposed order to the judge to~~
24 ~~whom the case is assigned, or to the presiding judge or supervising judge if the case~~
25 ~~has not been assigned. The proposed order must state the name, business address,~~
26 ~~and telephone number of the proposed referee and, if he or she is a member of the~~
27 ~~State Bar, the proposed referee's State Bar number. If the proposed referee is a~~
28 ~~former California judicial officer, he or she must be an active or inactive member of~~
29 ~~the State Bar. The proposed order must bear the proposed referee's signature~~
30 ~~indicating consent to serve and certification that he or she is aware of and will~~
31 ~~comply with applicable provisions of canon 6 of the Code of Judicial Ethics and~~
32 ~~these rules. The written agreement and proposed order must clearly state whether~~
33 ~~the scope of the reference covers all issues or is limited to specified issues.~~
34

35 **(b) Purposes of reference**

36
37 ~~A court must not use the reference procedure under Code of Civil Procedure section~~
38 ~~638 to appoint a person to conduct a mediation. Nothing in this subdivision is~~
39 ~~intended to prevent a court from appointing a referee to conduct a mandatory~~
40 ~~settlement conference or, following the termination of a reference, from appointing~~
41 ~~a person who previously served as a referee to conduct a mediation.~~
42

1 **(e) Disclosure by referee**

2
3 In addition to any other disclosure required by law, no later than five days prior to
4 the deadline for parties to file a motion for disqualification of the referee under
5 Code of Civil Procedure section 170.6 or, — if the referee is not aware of his or her
6 appointment or of a matter subject to disclosure at that time, as soon as practicable
7 thereafter, a referee must disclose to the parties;

8
9 (1) Any matter subject to disclosure under subdivision (D)(2)(f) and (D)(2)(g) of
10 canon 6 of the Code of Judicial Ethics; and

11
12 (2) Any significant personal or professional relationship the referee has or has had
13 with a party, attorney, or law firm in the instant case, including the number
14 and nature of any other proceedings in the past 24 months in which the referee
15 has been privately compensated by a party, attorney, law firm, or insurance
16 company in the instant case for any services, including, but not limited to,
17 service as an attorney, expert witness, or consultant or as a judge, referee,
18 arbitrator, mediator, settlement facilitator, or other alternative dispute
19 resolution neutral.
20

21 **(d) Objections to the appointment**

22
23 An agreement for an order appointing a referee does not constitute a waiver of
24 grounds for objection to the appointment under section 641 of the Code of Civil
25 Procedure, but any objection must be made with reasonable diligence. Any
26 objection to the appointment of a person as a referee must be in writing and must be
27 filed and served upon all parties and the referee.
28

29 **(e) Use of court facilities and court personnel**

30
31 A party who has elected to use the services of a privately compensated referee
32 pursuant to section 638 of the Code of Civil Procedure is deemed to have elected to
33 proceed outside the courthouse; therefore, court facilities and court personnel must
34 not be used, except upon a finding by the presiding judge that the use would further
35 the interests of justice. For all matters pending before privately compensated
36 referees, the clerk must post a notice indicating the case name and number as well
37 as the telephone number of a person to contact to arrange for attendance at any
38 proceeding that would be open to the public if held in a courthouse.
39

40 **(f) Order for appropriate hearing site**

41
42 The presiding judge or supervising judge, on request of any person or on the judge's
43 own motion, may order that a case before a privately compensated referee must be

1 heard at a site easily accessible to the public and appropriate for seating those who
2 have made known their plan to attend hearings. The request must be by letter with
3 reasons stated and must be accompanied by a declaration that a copy of the request
4 was mailed to each party, to the referee, and to the clerk for placement in the file.
5 The order may require that notice of trial or of other proceedings be given to the
6 requesting party directly. An order for an appropriate hearing site is not grounds for
7 withdrawal of a stipulation.
8

9 **(g) Motion to withdraw stipulation or to seal records; complaint for intervention**

10
11 A motion to withdraw a stipulation for the appointment of a referee must be
12 supported by a declaration of facts establishing good cause for permitting the party
13 to withdraw the stipulation, and must be heard by the presiding judge or a judge
14 designated by the presiding judge. A declaration that a ruling is based on an error of
15 fact or law does not establish good cause for withdrawing a stipulation. Notice of
16 the motion must be served and filed, and the moving party must mail or deliver a
17 copy to the referee. If the motion is granted, the case must be transferred to the trial
18 court docket.
19

20 A motion to seal records in a cause before a privately compensated referee must be
21 served and filed and must be heard by the presiding judge or a judge designated by
22 the presiding judge. The moving party must mail or deliver a copy of the motion to
23 the referee and to any person or organization who has requested that the case take
24 place at an appropriate hearing site.
25

26 A motion for leave to file a complaint for intervention in a cause before a privately
27 compensated referee must be served and filed, and must be assigned for hearing as a
28 law and motion matter. The party seeking intervention must mail or deliver a copy
29 of the motion to the referee. If intervention is allowed, the case must be returned to
30 the trial court docket unless all parties stipulate in the manner prescribed in
31 subdivision (a) to proceed before the referee.
32

33 **(Reviser's note: Rules 3.900–3.911 below are based on current rule 244.1.)**

34
35 **Rule 3.900. Purposes of reference**

36
37 A court must not use the reference procedure under Code of Civil Procedure section 638
38 to appoint a person to conduct a mediation.
39

40 **Advisory Committee Comment**
41

1 Rule 3.900 is not intended to prohibit a court from appointing a referee to conduct a mandatory settlement
2 conference or, following the conclusion of a reference, from appointing a person who previously served
3 as a referee to conduct a mediation.

4
5 **(Reviser's note: Rule 3.900 is based on current rule 244.1(b). The comment language**
6 **has been removed from the current rule text and "conclusion" has been substituted**
7 **for "termination" because there is no established procedure by which references are**
8 **routinely terminated.)**

9
10 **Rule 3.901. Application for order appointing referee**

11
12 **(a) Stipulation or motion for appointment**

13
14 A written stipulation or motion for an order appointing a referee under Code of
15 Civil Procedure section 638 must be presented to the judge to whom the case is
16 assigned, or to the presiding judge or law and motion department if the case has not
17 been assigned.

18
19 **(b) Contents of application**

20
21 The stipulation or motion for the appointment of a referee under section 638 must:

- 22
23 (1) Clearly state whether the scope of the requested reference includes all issues
24 or is limited to specified issues;
25
26 (2) State whether the referee will be privately compensated;
27
28 (3) If authorization to use court facilities or court personnel is requested, describe
29 the use requested and state the reasons that this would further the interests of
30 justice;
31
32 (4) If the applicant is requesting or the parties have stipulated to the appointment
33 of a particular referee, be accompanied by the proposed referee's certification
34 as required by rule 3.904(a); and
35
36 (5) Be accompanied by a proposed order that includes the matters specified in rule
37 3.902.
38

39 **(Reviser's note: Subdivision (a) of rule 3.901 is based on current rule 244.1(a).**
40 **"Stipulation" has been substituted for "agreement" to clarify that either a**
41 **stipulation or a motion is required for the appointment of a referee based on a pre-**
42 **dispute agreement for reference (e.g. in a lease). Subdivision (b) is based on current**
43 **rule 244.1(a), (e), and (f). Paragraphs (b)(2) and (3) have been added to implement**

1 the provision of rule 244.1(e) that court facilities and staff may only be used in
2 matters pending before a privately compensated referee upon a finding that the use
3 will further the interests of justice.)

4 5 **Rule 3.902. Order appointing referee**

6
7 An order appointing a referee under Code of Civil Procedure section 638 must be filed
8 with the clerk or entered in the minutes and must specify:

- 9
10 (1) The name, business address, and telephone number of the referee and, if he or she is
11 a member of the State Bar, the referee's State Bar number;
12
13 (2) Whether the scope of the reference covers all issues or is limited to specified issues;
14
15 (3) Whether the referee will be privately compensated;
16
17 (4) Whether the use of court facilities and court personnel is authorized; and
18
19 (5) The name and telephone number of a person to contact to arrange for attendance at
20 any proceeding that would be open to the public if held in a courthouse.
21

22 (Reviser's note: Rule 3.902 is based on Code of Civil Procedure section 638 and
23 current rules 244.1 (a) and (e). The current requirement of rule 244.1(a) that
24 specified matters be set forth in a proposed order has been changed to a
25 requirement that they be specified in the order appointing the referee. Paragraphs
26 (3) and (4) have been added to implement the provision of rule 244.1(e) that court
27 facilities and staff may only be used in matters pending before a privately
28 compensated referee upon a finding that the use will further the interests of justice.)
29

30 **Rule 3.903. Selection and qualifications of referee**

31
32 The court must appoint the referee or referees as provided in Code of Civil Procedure
33 section 640. If the proposed referee is a former judicial officer, he or she must be an
34 active or an inactive member of the State Bar.
35

36 (Reviser's note: Rule 3.903 is based on current rule 244.1(a). The first sentence has
37 been added to make the rule consistent with current rule 244.2(d) (revised rule
38 3.923).)
39

40 **Rule 3.904. Certification and disclosure by referee**

41 42 **(a) Certification by referee**

43

1 Before a referee begins to serve:

2
3 (1) The referee must certify in writing that he or she consents to serve as provided
4 in the order of appointment and is aware of and will comply with applicable
5 provisions of canon 6 of the Code of Judicial Ethics and the California Rules
6 of Court; and

7
8 (2) The referee's certification must be filed with the court.
9

10 **(b) Disclosure by referee**

11
12 In addition to any other disclosure required by law, no later than five days prior to
13 the deadline for parties to file a motion for disqualification of the referee under
14 Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her
15 appointment or of a matter subject to disclosure at that time, as soon as practicable
16 thereafter, a referee must disclose to the parties:

17
18 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of
19 canon 6 of the Code of Judicial Ethics; and

20
21 (2) Any significant personal or professional relationship the referee has or has had
22 with a party, attorney, or law firm in the current case, including the number
23 and nature of any other proceedings in the past 24 months in which the referee
24 has been privately compensated by a party, attorney, law firm, or insurance
25 company in the current case for any services. The disclosure must include
26 privately compensated service as an attorney, expert witness, or consultant or
27 as a judge, referee, arbitrator, mediator, settlement facilitator, or other
28 alternative dispute resolution neutral.
29

30 **(Reviser's note: Subdivision (a) of rule 3.904 is based on current rule 244.1(a). The**
31 **rule has been revised to require the filing of the referee's certification before the**
32 **referee begins to serve, rather than with the proposed order. Subdivision (b) is**
33 **based on current rule 244.1(c).)**
34

35 **Rule 3.905. Objections to the appointment**

36
37 A stipulation or an agreement for an order appointing a referee does not constitute a
38 waiver of grounds for objection to the appointment of a particular person as referee under
39 Code of Civil Procedure section 641. Any objection to the appointment of a person as a
40 referee must be made with reasonable diligence and in writing. The objection must be
41 served on all parties and the referee and filed with the court. The objection must be heard
42 by the judge to whom the case is assigned or by the presiding judge or law and motion
43 judge if the case has not been assigned.

1
2 **(Reviser's note: Rule 3.905 is based on current rule 244.1(d). The judge who is to**
3 **hear the objection has been specified to clarify that the motion is to be heard by the**
4 **court, rather than by the referee.)**
5

6 **Rule 3.906. Motion to withdraw stipulation**
7

8 **(a) Good cause requirement**
9

10 A motion to withdraw a stipulation for the appointment of a referee must be
11 supported by a declaration of facts establishing good cause for permitting the party
12 to withdraw the stipulation. The following do not constitute good cause for
13 withdrawing a stipulation:
14

15 (1) A declaration that a ruling is based on an error of fact or law.
16

17 (2) The issuance of an order for an appropriate hearing site pursuant to rule 3.910.
18

19 **(b) Service, filing and hearing of motion**
20

21 Notice of the motion must be served on all parties and the referee and filed with the
22 court. The motion must be heard by the judge to whom the case is assigned or by
23 the presiding judge or law and motion judge. If the motion is granted, the case must
24 be transferred to the trial court docket.
25

26 **(Reviser's note: Rule 3.906 is based on current rules 244.1(f) and (g). The judge who**
27 **is to hear the motion has been specified to clarify that the motion is to be heard by**
28 **the court, rather than by the referee.)**
29

30 **Rule 3.907. Motion or application to seal records**
31

32 A motion or application to seal records in a case pending before a referee must be served
33 on all parties, the referee, and any person or organization that has made their intention to
34 attend the hearing known and be filed with the court. The motion or application must be
35 heard by the judge to whom the case is assigned or by the presiding judge or law and
36 motion judge. Rules 2.550 and 2.551 apply to the motion or application to seal the
37 records.
38

39 **(Reviser's note: Rule 3.907 is based on current rule 244.1(g). The rule has been**
40 **revised to require that the motion or application be served on, rather than mailed or**
41 **delivered to, the referee and other persons or organizations. The judge who is to**
42 **hear the motion has been specified to clarify that the motion is to be heard by the**
43 **court, rather than by the referee.)**

1
2 **Rule 3.908. Motion for leave to file complaint for intervention**

3
4 A motion for leave to file a complaint for intervention in a case pending before a referee
5 must be served on all parties and the referee and filed with the court. The motion must be
6 heard by the judge to whom the case is assigned or by the presiding judge or law and
7 motion judge if the case has not been assigned. If intervention is allowed, the case must
8 be returned to the trial court docket unless all parties stipulate in the manner prescribed in
9 rule 3.901 to proceed before the referee.

10
11 (Reviser's note: rule 3.908 is based on current rule 244.1(g). The rule has been
12 revised to be applicable to all proceedings before referees appointed under Code of
13 Civil Procedure section 638, regardless of whether they are privately compensated,
14 and to require that the motion be served on, rather than mailed or delivered to, the
15 referee. The specification of the judge who is to hear the motion has been revised to
16 be consistent with other sections in the division.)

17
18 **Rule 3.909. Proceedings before privately compensated referees**

19
20 **(a) Use of court facilities and court personnel**

21
22 A party who has elected to use the services of a privately compensated referee is
23 deemed to have elected to proceed outside the courthouse. Court facilities and court
24 personnel may not be used in proceedings pending before a privately compensated
25 referee, except on a finding by the presiding judge that their use would further the
26 interests of justice.

27
28 **(b) Posting of notice in courthouse**

29
30 For all matters pending before privately compensated referees, the clerk must post a
31 notice in the courthouse identifying the case name and number and the name and
32 telephone number of a person to contact to arrange for attendance at any proceeding
33 that would be open to the public if held in a courthouse.

34
35 (Reviser's note: Rule 3.909 is based on current rule 244.1(e).)

36
37 **Rule 3.910. Request and order for appropriate and accessible hearing site**

38
39 The court may, on the request of any person or on the court's own motion, order that a
40 case pending before a referee must be heard at a site easily accessible to the public and
41 appropriate for seating those who have notified the court of their intention to attend
42 hearings. A request for hearings at an accessible and appropriate site must state the
43 reasons for the request, be served on all parties and the referee, and be filed with the

1 court. The order may require that notice of trial or of other proceedings be given to the
2 requesting person directly.

3
4 **(Reviser's note: Rule 3.910 is based on current rule 244.1(f). The rule has been**
5 **revised to provide that the order may be made by the court, rather than by the**
6 **presiding or supervising judge, and that the request must be served on all parties**
7 **and the referee and filed with the court, rather than mailed to each party, the**
8 **referee, and the clerk for placement in the court's file.)**

9
10 **Chapter 2. Court-Ordered Reference Under Code of Civil Procedure Section 639**

11
12 **(Reviser's note: Rule 244.2 would be repealed and its provisions placed into the**
13 **separate rules in this chapter.)**

14
15 **Rule 244.2. Reference by order**

16
17 **(a) Motion for reference pursuant to Code of Civil Procedure section 639**

18
19 ~~A motion by a party for the appointment of a referee pursuant to section 639 of the~~
20 ~~Code of Civil Procedure must be served and filed and must be heard in the~~
21 ~~department to which the case is assigned or, if the case has not been assigned, in the~~
22 ~~department in which law and motion matters are heard. The motion must specify the~~
23 ~~matter or matters to be included in the requested reference.~~

24
25 **(b) Purposes of references**

26
27 ~~A court may order the appointment of a referee under Code of Civil Procedure~~
28 ~~section 639 only for the purposes specified in that section. A court must not use the~~
29 ~~reference procedure under Code of Civil Procedure section 639 to appoint a person~~
30 ~~to conduct a mediation. Nothing in this subdivision is intended to limit the power of~~
31 ~~a court to appoint a referee to conduct a mandatory settlement conference in a~~
32 ~~complex case or to prevent a court, following the termination of a reference, from~~
33 ~~appointing a person who previously served as a referee to conduct a mediation.~~

34
35 **(c) Reference order**

36
37 ~~A discovery referee must not be appointed pursuant to Code of Civil Procedure~~
38 ~~section 639(a)(5) unless the exceptional circumstances of the particular case require~~
39 ~~it. A referee must not be appointed at a cost to the parties unless the court can make~~
40 ~~one of the findings required by Code of Civil Procedure section 639(d)(6). Before~~
41 ~~an order appointing a referee is issued, the proposed referee must certify that he or~~
42 ~~she is aware of and will comply with applicable provisions of canon 6 of the Code~~
43 ~~of Judicial Ethics and these rules.~~

1
2 An order appointing a referee under Code of Civil Procedure section 639, whether
3 based on a motion of a party or on the court's own motion, must be in writing and
4 must address all of the matters required by Code of Civil Procedure section 639. If
5 the referee is a member of the State Bar, the order must include the referee's State
6 Bar number. The referee's certification that he or she is aware of and will comply
7 with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules
8 must be attached to the order. When the issue of economic hardship is raised before
9 the commencement of the referee's services, the court must determine a fair and
10 reasonable apportionment of reference costs. The court may modify its order as to
11 the apportionment and may consider a recommendation by the referee as a factor in
12 determining any modification.

13
14 **(d) Selecting the referee**

15
16 The court must appoint the referee or referees as provided in Code of Civil
17 Procedure section 640. If the referee is a former California judicial officer, he or she
18 must be an active or inactive member of the State Bar.

19
20 **(e) Disclosure by referee**

21
22 In addition to any other disclosure required by law, no later than five days prior to
23 the deadline for parties to file a motion for disqualification of the referee under
24 Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her
25 appointment or of a matter subject to disclosure at that time, as soon as practicable
26 thereafter, a referee must disclose to the parties:

- 27
28 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of
29 canon 6 of the Code of Judicial Ethics; and
30
31 (2) Any significant personal or professional relationship the referee has or has had
32 with a party, attorney, or law firm in the instant case, including the number
33 and nature of any other proceedings in the past 24 months in which the referee
34 has been privately compensated by a party, attorney, law firm, or insurance
35 company in the instant case for any services, including, but not limited to,
36 service as an attorney, expert witness, or consultant or as a judge, referee,
37 arbitrator, mediator, settlement facilitator, or other alternative dispute
38 resolution neutral.

39
40 **(f) Objection to reference**

41
42 Participation in the selection procedure under subdivision (d) does not constitute a
43 waiver of grounds for objection to the appointment under section 641 of the Code of

1 Civil Procedure, or objection to the rate or apportionment of compensation of the
2 referee, but any objection must be made with reasonable diligence. Any objection to
3 the appointment of a person as a referee must be in writing and must be filed and
4 served upon all parties and the referee.
5

6 **(g) Use of court facilities**
7

8 A reference ordered pursuant to section 639 of the Code of Civil Procedure entitles
9 the parties to the use of court facilities and court personnel to the extent provided in
10 the order of reference. The proceedings may be held in a private facility, but if so,
11 the private facility must be open to the public upon request of any person.
12

13 **(h) Discovery referees**
14

15 When a referee is appointed under section 639(a)(5) of the Code of Civil Procedure
16 to assist in the resolution of a discovery dispute:
17

18 (1) The order appointing the referee must clearly state whether the referee is being
19 appointed for all discovery purposes or only for limited purposes.
20

21 (2) The referee is authorized to set the date, time, and place for all hearings
22 determined by the referee to be necessary, to direct the issuance of subpoenas,
23 to preside over hearings, to take evidence, and to rule on objections, motions,
24 and other requests made during the course of the hearing.
25

26 **(Reviser's note: Rules 3.920–3.927 are based on current rule 244.2.)**
27

28 **Rule 3.920. Purposes and conditions for appointment of referee**
29

30 **(a) Purposes prescribed by statute**
31

32 A court may order the appointment of a referee under Code of Civil Procedure
33 section 639 only for the purposes specified in that section.
34

35 **(b) No references for mediation**
36

37 A court must not use the reference procedure under Code of Civil Procedure section
38 639 to appoint a person to conduct a mediation.
39

40 **(c) Conditions for appointment of discovery referee**
41

A discovery referee must not be appointed under Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require the appointment.

Advisory Committee Comment

Rule 3.920(b) is not intended to prohibit a court from appointing a referee to conduct a mandatory settlement conference in a complex case or, following the conclusion of a reference, from appointing a person who previously served as a referee to conduct a mediation.

(Reviser’s note: Subdivisions (a) and (b) of rule 3.920 are based on current rule 244.2(b) and subdivision (c) is based on current rule 244.2(c). The comment language has been removed from current rule 244.2(b) and “conclusion” has been substituted for “termination” because there is no established procedure by which references are routinely terminated.)

Rule 3.921. Motion for appointment of a referee

(a) Filing and contents

A motion by a party for the appointment of a referee under Code of Civil Procedure section 639 must be served and filed. The motion must specify the matter or matters to be included in the requested reference. If the applicant is requesting the appointment of a particular referee, the motion must be accompanied by the proposed referee's certification as required by rule 3.924(a).

(b) Hearing

The motion must be heard by the judge to whom the case is assigned, or by the presiding judge or law and motion judge if the case has not been assigned.

(Reviser's note: Rule 3.921 is based on current rule 244.2(a) and (c).)

Rule 3.922. Form and contents of order appointing referee

(a) Written order required

An order appointing a referee under Code of Civil Procedure section 639, on the motion of a party or on the court's own motion, must be in writing and must address the matters set forth in (b) through (h).

(b) Referee information

1 The order must state the name, business address, and telephone number of the
2 referee and, if he or she is a member of the State Bar, the referee's State Bar
3 number.

4
5 **(c) Basis for reference**

6
7 The order must specify whether the referee is appointed under paragraph (1), (2),
8 (3), (4), or (5) of subdivision (a) of section 639 and:

- 9
10 (1) If the referee is appointed under section 639(a)(1)–(a)(4), the order must state
11 the reason the referee is being appointed.
12
13 (2) If the referee is appointed under section 639(a)(5) to hear and determine
14 discovery motions and disputes relevant to discovery, the order must state the
15 exceptional circumstances of the particular case that require the reference.
16

17 **(d) Subject matter and scope of reference**

- 18
19 (1) The order must specify the subject matter or matters included in the reference.
20
21 (2) If the referee is appointed under section 639(a)(5) to hear and determine
22 discovery motions and disputes relevant to discovery, the order must state
23 whether the discovery referee is appointed for all purposes or only for limited
24 purposes.
25

26 **(e) Authority of discovery referee**

27
28 If the referee is appointed under section 639(a)(5) to hear and determine discovery
29 motions and disputes relevant to discovery, the order must state that the referee is
30 authorized to set the date, time, and place for all hearings determined by the referee
31 to be necessary; direct the issuance of subpoenas; preside over hearings, take
32 evidence; and rule on objections, motions, and other requests made during the
33 course of the hearing;
34

35 **(f) Referee fees; apportionment**

36
37 If the referee will be appointed at a cost to the parties, the order must:
38

- 39 (1) Specify the maximum hourly rate the referee may charge and, if any party so
40 requests, the maximum number of hours for which the referee may charge;
41
42 (2) Include a finding that either:
43

1 (A) No party has established an economic inability to pay a pro rata share of
2 the referee's fee; or

3
4 (B) One or more parties has established an economic inability to pay a pro
5 rata share of the referee's fees and another party has agreed voluntarily
6 to pay that additional share of the referee's fees.

7
8 (3) When the issue of economic hardship is raised before the referee begins
9 performing services, the court must determine a fair and reasonable
10 apportionment of reference costs. The court may modify its apportionment
11 order and may consider a recommendation by the referee as a factor in
12 determining any modification.

13
14 **(g) Use of court facilities and court personnel**

15
16 The order must specify the extent, if any, to which court facilities and court
17 personnel may be used in connection with the reference.

18
19 **(h) Contact to arrange attendance at proceedings before referee**

20
21 The order must state the name and telephone number of a person to contact to
22 arrange for attendance at any proceeding before the referee.

23
24 **(Reviser's note: Subdivision (a) of rule 3.922 is based on Code of Civil Procedure**
25 **section 639(d) and current rule 244.2(c). However, instead of providing that the**
26 **order must address all of the matters required by Code of Civil Procedure section**
27 **639, the revised section itself sets forth the matters that must be addressed.**
28 **Subdivision (b) is based on section 639(d)(4). Subdivision (c) is based on section**
29 **639(d)(1) and (2). Paragraph (d)(1) is based on section 639(d)(3) and current rule**
30 **244.2(h)(1). Paragraph (d)(2) is based on section 639(d)(2). Subdivision (e) is based**
31 **on current rule 244.2(h)(2). Subdivision (f) is based on sections 639(d)(5) and (6) and**
32 **current rule 244.2(c). Subdivision (g) is based on current rule 244.2(g). Subdivision**
33 **(h) is new and implements provisions of current rule 244.2(g) that proceedings must**
34 **be open to the public upon the request of any party.)**

35
36 **Rule 3.923. Selection and qualification of referee**

37
38 The court must appoint the referee or referees as provided in Code of Civil Procedure
39 section 640. If the referee is a former California judicial officer, he or she must be an
40 active or inactive member of the State Bar.

41
42 **(Reviser's note: Rule 3.923 is based on current rule 244.2(d).)**
43

1 **Rule 3.924. Certification and disclosure by referee**

2
3 **(a) Certification by referee**

4
5 Before a referee begins to serve:

6
7 (1) The referee must certify in writing that he or she consents to serve as provided
8 in the order of appointment and is aware of and will comply with applicable
9 provisions of canon 6 of the Code of Judicial Ethics and the California Rules
10 of Court; and

11
12 (2) The referee's certification must be filed with the court.

13
14 **(b) Disclosure by referee**

15
16 In addition to any other disclosure required by law, no later than five days prior to
17 the deadline for parties to file a motion for disqualification of the referee under
18 Code of Civil Procedure section 170.6 or, if the referee is not aware of his or her
19 appointment or of a matter subject to disclosure at that time, as soon as practicable
20 thereafter, a referee must disclose to the parties:

21
22 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of
23 canon 6 of the Code of Judicial Ethics; and

24
25 (2) Any significant personal or professional relationship the referee has or has had
26 with a party, attorney, or law firm in the current case, including the number
27 and nature of any other proceedings in the past 24 months in which the referee
28 has been privately compensated by a party, attorney, law firm, or insurance
29 company in the current case for any services. The disclosure must include
30 privately compensated service as an attorney, expert witness, or consultant or
31 as a judge, referee, arbitrator, mediator, settlement facilitator, or other
32 alternative dispute resolution neutral.

33
34 **(Reviser's note: Subdivision (a) of rule 3.924 is based on current rule 244.2 (c), and**
35 **changes the current requirements that the referee's certification be made before the**
36 **order is issued and attached to the order to a requirement that the certification be**
37 **made and filed with the court before the referee begins to serve. Subdivision (b) is**
38 **based on current rule 244.2(e).)**

39
40 **Rule 3.925. Objection to reference**

41
42 The filing of a motion for an order appointing a referee does not constitute a waiver of
43 grounds for objection to the appointment of a particular person as referee under Code of

Civil Procedure section 641, or objection to the rate or apportionment of compensation of the referee. Any objection to the appointment of a particular person as a referee must be made with reasonable diligence and in writing. The objection must be heard by the judge to whom the case is assigned, or by the presiding judge or the law and motion judge.

(Reviser's note: Rule 3.925 is based on Code of Civil Procedure section 640(c) and current rules 244.2(f). The judge who is to hear the objection has been specified to clarify that the motion is to be heard by the court, rather than by the referee.)

Rule 3.926. Use of court facilities

A reference ordered under Code of Civil Procedure section 639 entitles the parties to the use of court facilities and court personnel to the extent provided in the order of reference. The proceedings may be held in a private facility, but, if so, the private facility must be open to the public upon request of any person.

(Reviser's note: Rule 3.926 is based on current rule 244.2(g).)

Rule 3.927. Circumstances required for appointment of discovery referee

A discovery referee must not be appointed under Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require the appointment.

(Reviser's note: Rule 3.927 is based on current rule 244.2(h)(1).)

Division 10. Discovery

Chapter 1. Format of Discovery

Rule 3.1000.331. Format of supplemental and further discovery

(a) Supplemental interrogatories and responses, etc.

In each set of (4) supplemental interrogatories, (2) supplemental responses to interrogatories, (3) amended answers to interrogatories, and (4) further responses to interrogatories, inspection demands, and admission requests, the following ~~shall~~ must appear in the first paragraph immediately below the title of the case:

(1) The identity of the propounding, demanding, or requesting party;

(2) The identity of the responding party;

1 (3) The set number being propounded or responded to; and

2
3 (4) The nature of the paper.

4
5 **(b) ~~Sequence~~ Identification of responses**

6
7 Each supplemental or further response and each amended answer ~~shall~~ must be
8 identified by the same number or letter and be in the same sequence as the
9 corresponding interrogatory, inspection demand, or admission request, but the text
10 ~~shall~~ of the interrogatory, demand, or request need not be repeated.

11
12 **Chapter 2. Conduct of Discovery**

13
14 **Rule ~~3.1010.333~~. Oral depositions by telephone, videoconference, or other remote**
15 **electronic means**

16
17 **(a) Taking depositions**

18
19 Any party may take an oral deposition by telephone, videoconference, or other
20 remote electronic means, provided:

- 21
22 (1) Notice is served with the notice of deposition or the subpoena;
23
24 (2) That party makes all arrangements for any other party to participate in the
25 deposition in an equivalent manner. However, each party so appearing must
26 pay all expenses incurred by it or properly allocated to it;
27
28 (3) Any party may be personally present at the deposition without giving prior
29 notice.

30
31 **(b) Appearing and participating in depositions**

32
33 Any party may appear and participate in an oral deposition by telephone,
34 videoconference, or other remote electronic means, provided:

- 35
36 (1) Written notice of such appearance is served by personal delivery or ~~facsimile~~
37 fax at least three court days before the deposition;
38
39 (2) The party so appearing makes all arrangements and pays all expenses incurred
40 for the appearance.

41
42 **(c) Party deponent's appearance**
43

1 A party deponent must appear at his or her deposition in person and be in the
2 presence of the deposition officer.

3
4 **(d) Non-party deponent's appearance**

5
6 A non-party deponent may appear at his or her deposition by telephone,
7 videoconference, or other remote electronic means with court approval upon a
8 finding of good cause and no prejudice to any party. The deponent must be sworn in
9 the presence of the deposition officer or by any other means stipulated to by the
10 parties or ordered by the court. Any party may be personally present at the
11 deposition.

12
13 **(e) Court orders**

14
15 Upon motion by any person, the court in a specific action may make such other
16 orders as it deems appropriate.

17
18 **Chapter 3. Discovery Motions**

19
20 **Rule 3.1020.335. Format of discovery motions**

21
22 **(a) Separate statement required**

23
24 Any motion involving the content of a discovery request or the responses to such a
25 request ~~shall~~ must be accompanied by a separate statement. The motions that
26 require a separate statement include:

- 27
28 (1) A motion to compel further responses to requests for admission;
29
30 (2) A motion to compel further responses to interrogatories;
31
32 (3) A motion to compel further responses to a demand for inspection of
33 documents or tangible things;
34
35 (4) A motion to compel answers at a deposition;
36
37 (5) A motion to compel or to quash the production of documents or tangible
38 things at a deposition;
39
40 (6) A motion for medical examination over objection; and
41
42 (7) A motion for issue or evidentiary sanctions.
43

1 **(b) Separate statement not required**

2
3 A separate statement is not required when no response has been provided to the
4 request for discovery.
5

6 **(c) Contents of separate statement**

7
8 A separate statement is a separate document filed and served with the discovery
9 motion that ~~sets forth~~ provides all the information necessary to understand each
10 discovery request and all the responses to it that are at issue. The separate statement
11 ~~shall~~ must be full and complete so that no person is required to review any other
12 document in order to determine the full request and the full response. Material ~~shall~~
13 must not be incorporated into the separate statement by reference. The separate
14 statement ~~shall~~ must include—for each discovery request (e.g., each interrogatory,
15 request for admission, deposition question, or inspection demand) to which a further
16 response, answer, or production is requested—the following:
17

- 18 (1) The text of the request, interrogatory, question, or inspection demand;
19
20 (2) The text of each response, answer, or objection, and any further responses or
21 answers;
22
23 (3) A statement of the factual and legal reasons for compelling further responses,
24 answers, or production as to each matter in dispute;
25
26 (4) If necessary, the text of all definitions, instructions, and other matters required
27 to understand each discovery request and the responses to it;
28
29 (5) If the response to a particular discovery request is dependent on the response
30 given to another discovery request, or if the reasons a further response to a
31 particular discovery request is deemed necessary are based on the response to
32 some other discovery request, the other request and the response to it must be
33 set forth; and
34
35 (6) If the pleadings, other documents in the file, or other items of discovery are
36 relevant to the motion, the party relying on them ~~shall~~ must summarize each
37 relevant document.
38

39 **(d) Identification of interrogatories, demands, or requests**

40
41 A motion concerning interrogatories, inspection demands, or admission requests
42 ~~shall~~ must identify the interrogatories, demands, or requests by set and number.
43

1 **Rule ~~3.1025.337~~. Service of motion papers on nonparty deponent**

2
3 A written notice and all moving papers supporting a motion to compel an answer to a
4 deposition question or to compel production of a document or tangible thing from a
5 nonparty deponent ~~shall~~ must be personally served on the nonparty deponent unless the
6 nonparty deponent agrees to accept service by mail at an address specified on the
7 deposition record.
8

9 **Rule ~~3.1030.341~~. Sanctions for failure to provide discovery**

10
11 **(a) Sanctions despite no opposition**

12
13 The court may award sanctions under the Discovery Act in favor of a party who
14 files a motion to compel discovery, even though no opposition to the motion was
15 filed, or opposition to the motion was withdrawn, or the requested discovery was
16 provided to the moving party after the motion was filed.
17

18 **(b) Failure to oppose not an admission**

19
20 The failure to file a written opposition or to appear at a hearing or the voluntary
21 provision of discovery shall not be deemed an admission that the motion was proper
22 or that sanctions should be awarded.
23

24 **Division 11. Law and Motion**

25
26 **Chapter 1. General Provisions**

27
28 **Rule ~~3.1100.301~~. Applicability**

29
30 The rules in this division apply to proceedings in civil law and motion, as defined in rule
31 ~~303(a)~~ 3.1103, and to discovery proceedings in family law and probate.
32

33 **Rule ~~3.1103.303~~. Definitions and construction**

34
35 **(a) Law and motion defined**

36
37 “Law and motion” includes any proceedings:
38

- 39 (1) On application before trial for an order, except for causes arising under the
40 Welfare and Institutions Code, the Probate Code, the Family Code, or Code of
41 Civil Procedure sections 527.6, 527.7, and 527.8; or
42

(2) On application for an order regarding the enforcement of judgment, attachment of property, appointment of a receiver, obtaining or setting aside a judgment by default, writs of review, mandate and prohibition, a petition to compel arbitration, and enforcement of an award by arbitration.

(b) Application of ~~other~~ rules on extending or shortening time

~~Rules 235 and 249~~ 1.10(c) and 3.1210 on extending or shortening time ~~apply~~
applies to proceedings under this division.

(c) Application to demurrers

Unless the context or subject matter otherwise requires, these rules in this division apply to demurrers.

(Reviser's note: Based on (c), several subsequent references to demurrers in the current rules in this division are unnecessary and have been eliminated.)

~~Rule 307. Assignment of matters~~

~~Except as provided in rule 375, the presiding judge or a judge designated by the presiding judge shall hear proceedings in law and motion.~~

(Reviser's note: This rule would be eliminated as unnecessary and as inconsistent with the practices and procedures in the courts where cases are assigned to a single judge for all purposes.)

Rule 3.1009.309. Notice of determination of submitted matters

(a) Notice by clerk

When the court rules on a ~~demurrer or~~ motion or makes an order or renders a judgment in a matter it has taken under submission, the clerk ~~shall~~ must ~~forthwith~~ immediately notify the parties of the ruling, order, or judgment. The notification, which ~~shall~~ must specifically identify the matter ruled upon, may be given by mailing the parties a copy of the ruling, order or judgment, and it ~~shall~~ constitutes service of notice only if the clerk is required to give notice pursuant to Code of Civil Procedure section 664.5. ~~The failure of the clerk to give notification shall not extend the time provided by law for performing any act except as provided in rule 2(a) or rule 122(a).~~

(b) Notice in a case involving more than two parties

1 In a case ~~having~~ involving ~~multiple~~ more than two parties, a clerk's notification
2 made ~~pursuant to~~ under this rule, or any notice of a ruling or order served by a
3 party, ~~shall~~ must name the moving party, and the party against whom relief was
4 requested, and specifically identify the particular motion, ~~demurrer~~ or other matter
5 ruled upon.

6
7 **(c) Time not extended by failure of clerk to give notice**

8
9 The failure of the clerk to give the notice required by this rule does not extend the
10 time provided by law for performing any act except as provided in rules 2(a) or
11 122(a).

12
13 **Chapter 2. Format of Motion Papers**

14
15 **Rule 3.1110.341. General format**

16
17 **(a) ~~Opening paragraph~~ Notice of motion**

18
19 A notice of motion ~~shall~~ must state in the opening paragraph the nature of the order
20 being sought and the grounds for issuance of the order.

21
22 **(b) Date of hearing and other information; ~~other documents~~**

23
24 The first page of each paper ~~shall~~ must specify immediately below the number of
25 the case;

- 26
27 (1) The date, time, and location, if ascertainable, of any scheduled hearing and the
28 name of the hearing judge, if ascertainable;
29
30 (2) The nature or title of any attached document other than an exhibit;
31
32 (3) The date of filing of the action; and
33
34 (4) The trial date, if set.

35
36 **(c) Pagination of documents**

37
38 Documents bound together ~~shall~~ must be consecutively paginated.

39
40 **(~~e~~) (d) Reference to previously filed papers**

41
42 Any paper previously filed ~~shall~~ must be referred to by date of execution and title.

1 ~~(d)~~ **(e) Binding**

2
3 All pages of each document and exhibit ~~shall~~ must be attached together at the top by
4 a method that permits pages to be easily turned and the entire content of each page
5 to be read.
6

7 ~~(e)~~ **(f) Format of exhibits**

8
9 Each exhibit ~~shall~~ must be separated by a hard 8-½ x 11 sheet with hard paper or
10 plastic tabs extending below the bottom of the page, bearing the exhibit designation.
11 An index to exhibits ~~shall~~ must be provided. Pages from a single deposition and
12 associated exhibits ~~shall~~ must be designated as a single exhibit.
13

14 **(g) Translation of exhibits**

15
16 Exhibits written in a foreign language ~~shall~~ must be accompanied by an English
17 translation, certified under oath by a qualified interpreter.
18

19 **Rule 3.1112.312. ~~Motions, and demurrers,~~ and other pleadings**

20
21 **(a) ~~Motions and demurrers~~—required papers**

22
23 Unless otherwise provided by the rules in this division, the papers filed in support
24 of a motion or demurrer shall must consist of at least the following:
25

26 ~~(1) the motion or demurrer itself,~~

27
28 ~~(2) (1) A notice of hearing on the motion or demurrer, and;~~

29
30 (2) The motion itself; and

31
32 (3) A memorandum of points and authorities in support of the motion or
33 demurrer.
34

35 **(b) Other papers**

36
37 Other papers may be filed in support of a motion, including declarations, exhibits,
38 appendices, and other documents or pleadings.
39

40 **(c) Form of motion papers**

41
42 These papers filed under (a) and (b) may either be filed as separate documents or
43 ~~may be~~ combined in one or more documents if the party filing a combined pleading

specifies these items separately in the caption of the combined pleading. ~~Other papers may be filed in support of a motion or demurrer, such as declarations, exhibits, appendices, or other documents or pleadings.~~

~~(b)~~ (d) Motion—required elements

A motion ~~shall~~ must:

- (1) Identify the party or parties bringing the motion;
- (2) Name the parties to whom it is addressed;
- (3) Briefly state the basis for the motion and the relief sought; and
- (4) If a pleading is challenged, state the specific portion challenged.

~~(e)~~ Memorandum of points and authorities

~~A memorandum of points and authorities filed in support of a motion or demurrer shall comply with rule 313.~~

~~(d)~~ Motion in limine

~~Notwithstanding subdivisions (a) through (c), a motion in limine filed before or during trial need not be accompanied by a notice of hearing. The timing and place of the filing and service of the motion shall be at the discretion of the trial judge. The motion shall comply with the requirements of rules 201, 313, 315, and 316.~~

~~(e)~~ Additional requirements for motions and demurrers

In addition to the requirements of this rule, a motion ~~or demurrer~~ relating to the subjects specified in chapter 46 of this division (~~rule 325 et seq.~~) shall must comply with any additional requirements in that chapter.

(f) Motion in limine

Notwithstanding (a), a motion in limine filed before or during trial need not be accompanied by a notice of hearing. The timing and place of the filing and service of the motion are at the discretion of the trial judge.

~~(f)~~ Amended pleadings ~~Amendments to pleadings and amended pleadings shall comply with rule 327.~~

1 ~~(g) Causes of action form Each separate cause of action or affirmative defense in a~~
2 ~~pleading shall specifically identify its number (e.g., “First cause of Action”); its~~
3 ~~nature (e.g., “for Fraud”); the party asserting it, if more than one party is~~
4 ~~represented in the pleading (e.g., “by Plaintiff Jones”); and the party or parties to~~
5 ~~whom it is directed (e.g., “against Defendant Smith”).~~

6
7 ~~(h) Captions of pleadings Except for an original complaint, petition, cross complaint, or~~
8 ~~cross petition, every pleading, motion, and demurrer may bear the “short caption”~~
9 ~~of the case, consisting of the name of the first party on each side. All cross-~~
10 ~~complaints or cross petitions shall be collectively referenced at the bottom of the~~
11 ~~short caption as “and Related Cross Actions.” If a pleading, motion, or demurrer~~
12 ~~pertains to a particular cross complaint or cross petition, the caption shall identify~~
13 ~~the particular cross complaint or cross petition using only the names of the first-~~
14 ~~named cross complainant or cross petitioner and first named cross defendant or~~
15 ~~cross respondent in the original cross complaint or cross petition.~~

16
17 **(Reviser’s note: Current subdivision (c) would be eliminated as unnecessary.**
18 **Portions of current subdivision (g) have been relocated to title 2 on the form and**
19 **format of papers.)**

20
21 **Rule 3.1113.313. Memorandum of points and authorities**

22
23 **(a) Memorandum in support of motion ~~or demurrer~~**

24
25 A party filing a ~~demurrer or~~ motion, except for a motion listed in rule ~~314~~ 3.1114,
26 must serve and file ~~therewith~~ a supporting memorandum ~~in support~~. The court may
27 construe the absence of a memorandum as an admission that the motion or special
28 demurrer is not meritorious and cause for its denial and, in the case of a demurrer,
29 as a waiver of all grounds not supported.

30
31 **(b) Contents of memorandum**

32
33 The memorandum must contain a statement of facts, a concise statement of the law,
34 evidence and arguments relied on, and a discussion of the statutes, cases, and
35 textbooks cited in support of the position advanced.

36
37 **(c) Case citation format**

38
39 A case citation must include the official report volume and page number and year of
40 decision. ~~No other citations may be required.~~ The court must not require any other
41 form of citation.

1 **(d) Length of memorandum**

2
3 Except in a summary judgment or summary adjudication motion, no opening or
4 responding memorandum may exceed 15 pages. In a summary judgment or
5 summary adjudication motion, no opening or responding memorandum may exceed
6 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit
7 does not include exhibits, declarations, attachments, the table of contents, the table
8 of authorities, or the proof of service.
9

10 **(e) Application to file longer memorandum**

11
12 A party may apply to the court ex parte but with written notice of the application to
13 the other parties, at least 24 hours before the memorandum is due, for permission to
14 file a longer memorandum. The application must state reasons why the argument
15 cannot be made within the stated limit.
16

17 **(f) Format of longer memorandum**

18
19 A memorandum that exceeds 10 pages must include a table of contents and a table
20 of authorities. A memorandum that exceeds 15 pages must also include an opening
21 summary of argument.
22

23 **(g) Effect of filing an oversized memorandum**

24
25 A memorandum that exceeds the page limits of these rules must be filed and
26 considered in the same manner as a late-filed paper.
27

28 **~~(f)~~ (h) Pagination of memorandum**

29
30 Notwithstanding any other rule, ~~the pagination of a memorandum that includes a~~
31 ~~table of contents and a table of authorities must be paginated as follows: is governed~~
32 ~~by this rule. In the case of such a memorandum,~~
33

34 (1) The caption page or pages must not be numbered;

35
36 (2) The pages of the tables must be numbered consecutively using lower-case
37 Roman numerals starting on the first page of the tables; and
38

39 (3) The pages of the text must be numbered consecutively using Arabic numerals
40 starting on the first page of the text.
41

42 **~~(g)~~ (i) Use of *California Style Manual***

1 ~~The style used in a~~ A memorandum must ~~be that stated in~~ follow the style
2 prescribed by either the *California Style Manual* or *The Bluebook: Uniform System*
3 *of Citation*, at the option of the party filing the document. The same style must be
4 used consistently throughout the memorandum.

6 ~~(h)~~ (i) **Copies of non-California authorities**

8 If any authority other than California cases, statutes, constitutional provisions, or
9 state or local rules is cited, a copy of the authority must be lodged with the papers
10 that cite the authority and tabbed ~~as exhibits~~ as required by rule ~~311(e)~~ 3.1110(f). If
11 a California case is cited before the time it is published in the advance sheets of the
12 Official Reports, a copy of that case must also be lodged and tabbed as required by
13 rule ~~311(e)~~ 3.1110(f).

15 ~~(i)~~ (k) **Attachments**

17 To the extent practicable, all supporting memorandums, and declarations, ~~and~~
18 affidavits must be attached to the notice of motion.

20 ~~(j)~~ (l) **Exhibit references**

22 All references to exhibits or declarations in supporting or opposing papers must
23 reference the number or letter of the exhibit, the specific page, and, if applicable,
24 the paragraph or line number.

26 ~~(k)~~ (m) **Requests for judicial notice**

28 Any request for judicial notice must be made in a separate document listing the
29 specific items for which notice is requested and must comply with rule ~~323(e)~~
30 3.1306(c).

32 ~~(l)~~ (n) **Proposed orders or judgments**

34 If a proposed order or judgment is submitted, it must be lodged and served with the
35 moving papers but must not be attached to them.

37 **Rule ~~3.1114.314~~ Applications, motions, and petitions not requiring a supporting**
38 **memorandum**

40 **(a) Memorandum not required**

42 Civil motions, applications, and petitions filed on Judicial Council forms that do not
43 require a ~~supporting~~ memorandum include the following:

- (1) Application for appointment of guardian ad litem in a civil case;
- (2) Application for an order extending time to serve pleading;
- (3) Motion to be relieved as counsel;
- (4) Motion filed in small claims case;
- (5) Petition for change of name or gender;
- (6) Petition for declaration of emancipation of minor;
- (7) Petition for injunction prohibiting harassment;
- (8) Petition for protective order to prevent elder or dependent adult abuse;
- (9) Petition of employer for injunction prohibiting workplace violence;
- (10) Petition for order prohibiting abuse (transitional housing);
- (11) Petition to approve compromise of claim of a minor or an incompetent person;
and
- (12) Petition for withdrawal of funds from blocked account.

(b) Submission of a memorandum

Notwithstanding (a), if it would further the interests of justice, a party may submit, or the court may order the submission of, a memorandum in support of any motion, application, or petition. The memorandum must comply with rule ~~3.113~~ 3.1113.

Rule ~~3.1115~~ 3.15. Miscellaneous papers Declarations

~~(a) Caption of declaration or affidavit~~

The caption of ~~the a~~ declaration ~~or affidavit shall~~ must state the name of the declarant ~~or affiant~~ and ~~shall~~ must specifically identify the motion or other proceeding ~~which~~ that it supports or opposes.

~~(b) Substitution of party as attorney~~

1 ~~A substitution of a party as attorney in propria persona shall include the mailing~~
2 ~~address and telephone number of the party.~~

3
4 **(Reviser's notes: The adoption of the applicable mandatory form for substitution of**
5 **a party as an attorney makes (b) unnecessary.)**

6
7 **Rule 3.1116.316. Deposition testimony as an exhibit**

8
9 **(a) Title page**

10
11 The first page of any deposition used as an exhibit ~~shall~~ must state the name of the
12 deponent and the date of the deposition.

13
14 **(b) Deposition pages**

15
16 Other than the title page, the exhibit ~~shall~~ must contain only the relevant pages of
17 the transcript. The original page number of any deposition page ~~shall~~ must be
18 clearly visible ~~at the bottom of the page.~~

19
20 **(c) Highlighting of testimony**

21
22 The relevant portion of any testimony in the deposition ~~shall~~ must be marked in a
23 manner that calls attention to the testimony.

24
25 **Chapter 3. Provisional and Injunctive Relief**

26
27 **Article 1. General Provisions**

28
29 **Rule 3.1130.381. Bonds and undertakings**

30
31 **(a) Prerequisites to acceptance of corporate sureties**

32
33 A corporation ~~shall~~ must not be accepted or approved as surety on a bond or
34 undertaking unless the following conditions are met:

- 35
36 (1) The Insurance Commissioner has certified the corporation as being admitted
37 to do business in the state as a surety insurer;
38
39 (2) There is filed in the office of the clerk a copy, duly certified by the proper
40 authority ~~and attested by the seal of the corporation,~~ of the transcript or record
41 of appointment entitling or authorizing the person or persons purporting to
42 execute the bond or undertaking for and in behalf of the corporation to act in
43 the premises; and

1
2 (3) The bond or undertaking has been executed under penalty of perjury as
3 provided in Code of Civil Procedure section 995.630, or the fact of execution
4 of the bond or undertaking by the officer or agent of the corporation
5 purporting to become surety has been duly acknowledged before an officer of
6 this state authorized to take and certify acknowledgements.
7

8 **(b) Certain persons not eligible to act as sureties**
9

10 An officer of the court or member of the State Bar ~~shall~~ may not act as a surety.
11

12 **(c) Withdrawal of bonds and undertakings**
13

14 An original bond or undertaking may be withdrawn from the files and delivered to
15 the party by whom it was filed on order of the court only if all parties interested in
16 the obligation so stipulate, or upon a showing that the purpose for which it was filed
17 has been abandoned without any liability having been incurred.
18

19 **(Reviser's note: the reference in (a)(2) to a corporate seal would be eliminated as**
20 **obsolete. Subdivision (b) may require further clarification. Comments are invited on**
21 **these provisions.)**
22

23 **Article 2. Administrative Mandate**
24

25 **Rule 3.1140.347. Lodging of record in administrative mandate cases**
26

27 The party intending to use a part of the administrative record in a case brought under
28 ~~section 1094.5 of the Code of Civil Procedure~~ section 1094.5 ~~shall~~ must lodge that part of
29 the record at least five days before the hearing.
30

31 **Article 3. Injunctions**
32

33 **Rule 3.1150.359. Preliminary injunctions and bonds**
34

35 **(a) Manner of application and service**
36

37 A party requesting a preliminary injunction may give notice of the request to the
38 opposing or responding party either by serving a noticed motion under Code of
39 Civil Procedure section 1005 or by obtaining and serving an order to show cause
40 (“OSC”). An OSC ~~shall~~ must be used when a temporary restraining order (“TRO”) is
41 sought, or if the party against whom the preliminary injunction is sought has not
42 appeared in the action. If the responding party has not appeared, the OSC ~~shall~~ must
43 be served in the same manner as a summons and complaint.

1
2 **(b) Filing of complaint or obtaining of court file**
3

4 If the action is initiated the same day a TRO or an OSC is sought, the complaint
5 ~~shall~~ must be filed first. The moving party ~~shall~~ must provide a file-stamped copy of
6 the complaint to the judge who will hear the application. If an application for a TRO
7 or an OSC is made in an existing case, the moving party ~~shall~~ must request that the
8 court file be made available to the judge hearing the application.
9

10 **(c) Form of OSC and TRO**
11

12 The OSC and TRO ~~shall~~ must be stated separately, with the OSC stated first. The
13 restraining language sought in an OSC and a TRO ~~shall~~ must be separately stated in
14 the OSC and the TRO and may not be incorporated by reference. The OSC ~~shall~~
15 must describe the injunction to be sought at the hearing. The TRO ~~shall~~ must
16 describe the activities to be enjoined pending the hearing. A proposed OSC ~~shall~~
17 must contain blank spaces for the time and manner of service on responding parties,
18 the date on which the proof of service must be delivered to the court hearing the
19 OSC, a briefing schedule, and, if applicable, the expiration date of the TRO.
20

21 **(d) Personal attendance**
22

23 ~~TROs will be granted only if~~ The moving party or counsel for the moving party is
24 must be personally present when the request for a TRO is made.
25

26 **(e) Previous applications**
27

28 An application for a TRO or an OSC ~~shall~~ must state whether there has been any
29 previous application for similar relief and, if so, the result of the application.
30

31 **(f) Undertaking**
32

33 Notwithstanding rule ~~394~~ 3.1312 , whenever an application for a preliminary
34 injunction is granted, a proposed order ~~shall~~ must be presented to the judge for
35 signature, with an undertaking in the amount ordered, within one court day after the
36 granting of the application or within the time ordered. Unless otherwise ordered,
37 any restraining order previously granted ~~shall~~ remains in effect during the time
38 allowed for presentation for signature of the order of injunction and undertaking. If
39 the proposed order and the undertaking required are not presented within the time
40 allowed, the TRO may be vacated without notice. All bonds and undertakings ~~shall~~
41 must comply with rule ~~384~~ 3.1130.
42

1 (g) **Ex parte temporary restraining orders**

2
3 Applications for ex parte temporary restraining orders are governed by ~~rule 379~~ the
4 ex parte rules in chapter 4 of this division.

5
6 **Rule ~~3.1151.361~~ Requirements for injunction in certain cases**

7
8 A petition for an injunction to limit picketing, restrain real property encroachments, or
9 protect easements ~~shall~~ must depict by drawings, plot plans, photographs, or other
10 appropriate means, or ~~shall~~ must describe in detail the premises involved, including, if
11 applicable, the length and width of the frontage on a street or alley, the width of
12 sidewalks, and the number, size, and location of entrances.

13
14 **Rule ~~3.1152.363~~ Civil harassment and workplace violence**

15
16 (a) **Scheduling of hearing**

17
18 On the filing of a petition for an injunction under Code of Civil Procedure section
19 527.6 or 527.8, a hearing ~~shall~~ must be set in accordance with the requirements of
20 subdivision (d) of section 527.6 or subdivision (f) of section 527.8.

21
22 (b) **Temporary restraining order**

23
24 A temporary restraining order may be granted in accordance with the provisions of
25 Code of Civil Procedure section 527.6(c) or 527.8(e), but unless otherwise ordered
26 no memorandum of ~~points and authorities~~ is required.

27
28 (c) **Service of petition and orders**

29
30 The petition and order to show cause, and any temporary restraining order, ~~shall~~
31 must be personally served on the defendant. Service ~~shall~~ must be made in the
32 manner provided by law for personal service of summons in civil actions.

33
34 (d) **Response by defendant**

35
36 A response by defendant ~~shall~~ must be filed and delivered to plaintiff or plaintiff's
37 attorney no later than 48 hours before the hearing.

38
39 **Rule ~~3.1153.364~~ Minors may appear without counsel to seeking specified**
40 **restraining orders**

1 A minor, accompanied by a duly appointed and acting guardian ad litem, may be
2 permitted to appear in court without counsel for the limited purpose of obtaining or
3 opposing;

- 4
- 5 (1) An injunction or temporary restraining order or both to prohibit harassment
6 ~~pursuant to~~ under Code of Civil Procedure section 527.6;;
- 7
- 8 (2) An injunction or temporary restraining order or both against violence or a credible
9 threat of violence in the workplace ~~pursuant to~~ under Code of Civil Procedure
10 section 527.8;;
- 11
- 12 (3) A protective order ~~pursuant to~~ under Family Code section 6200 et seq.; or
- 13
- 14 (4) A protective order ~~pursuant to~~ under Family Code sections 7710 and 7720.
- 15

16 In making the determination concerning allowing appearance without counsel, the court
17 should consider whether the minor and the guardian have divergent interests.

18

19 Article 4. Receiverships

20 **Rule ~~3.1175.1900.~~ Ex parte application for appointment of receiver**

21 **(a) Application**

22

23 In addition to any other matters supporting an application for the ex parte
24 appointment of a receiver, the applicant must show in detail by verified complaint
25 or ~~affidavit~~ declaration:

26

- 27
- 28
- 29 (1) The nature of the emergency and the reasons irreparable injury would be
30 suffered by the applicant during the time necessary for a hearing on notice;
- 31
- 32 (2) The names, addresses, and telephone numbers of the persons in actual
33 possession of the property for which a receiver is requested, or of the
34 president, manager, or principal agent of any corporation in possession of the
35 property;
- 36
- 37 (3) The use being made of the property by the persons in possession; and
- 38
- 39 (4) If the property is a part of the plant, equipment, or stock in trade of any
40 business, the nature and approximate size or extent of the business; and facts
41 sufficient to show whether the taking of the property by a receiver would stop
42 or seriously interfere with the operation of the business.
- 43

1 **(b) Showing of diligence**

2
3 If any of the matters ~~enumerated in (a)~~ listed above are unknown to the applicant
4 and cannot be ascertained by the exercise of due diligence, the applicant's ~~may be~~
5 ~~excused from setting them forth. In that case, the affidavit~~ declaration or verified
6 complaint must fully state the matters unknown and the efforts made to acquire the
7 information.
8

9 **Rule ~~3.1176.1901.~~ Confirmation of ex parte appointment of receiver**

10
11 **(a) Order to show cause**

12
13 Whenever a receiver is appointed without notice, the matter must be made
14 returnable upon an order to show cause why the appointment should not be
15 confirmed. The order to show cause must be made returnable on the earliest date
16 that the business of the court will admit, but not later than 15 days or, if good cause
17 appears to the court, 22 days from the date the order is issued.
18

19 **(b) Service of complaint, order to show cause, affidavits declarations, and**
20 **memorandum of points and authorities**

21
22 The applicant must serve on each of the adverse parties:

- 23
24 (1) A copy of the complaint if not previously served;
25
26 (2) The order to show cause stating the date, time, and place of the hearing;
27
28 (3) Any affidavits declarations supporting the application; and
29
30 (4) A memorandum ~~of points and authorities~~ supporting the application.
31

32 Service must be made as soon as reasonably practical, but no later than 5 days after
33 the date on which the order to show cause is issued, unless the court orders another
34 time for service.
35

36 **(c) Failure to proceed or serve adverse party**

37
38 When the matter first comes on for hearing, the party ~~who~~ that obtained the
39 appointment must be ready to proceed. If that party is not ready to proceed or has
40 failed to exercise diligence to effect service upon the adverse parties as provided in
41 (b), the court may discharge the receiver.
42

1 **(d) Continuance**

2
3 The adverse parties are entitled to one continuance to enable them to oppose the
4 confirmation. If a continuance is granted under this subdivision, the order to show
5 cause remains in effect until the date of the continued hearing.
6

7 **Rule 3.1177.1902. Nomination of receivers**

8
9 At the hearing of an application for appointment of a receiver on notice or at the hearing
10 for confirmation of an ex parte appointment, each party appearing may, at the time of the
11 hearing, suggest in writing one or more persons for appointment or substitution as
12 receiver, stating the reasons. A party's suggestion is without prejudice to its objection to
13 the appointment or confirmation of a receiver.
14

15 **Rule 3.1178.1902.5. Amount of undertakings**

16
17 At the hearing of an application for appointment of a receiver on notice or ex parte, the
18 applicant must, and other parties may, propose and state the reasons for the specific
19 amounts of the undertakings required from (1) the applicant by Code of Civil Procedure
20 section 529, (2) the applicant by Code of Civil Procedure section 566(b), and (3) the
21 receiver by Code of Civil Procedure section 567(b), for any injunction that is ordered in
22 or with the order appointing a receiver.
23

24 **Rule 3.1179.1903. The receiver**

25
26 **(a) Agent of the court**

27
28 The receiver is the agent of the court and not of any party, and as such:

- 29
30 (1) Is neutral;
31
32 (2) Acts for the benefit of all who may have an interest in the receivership
33 property; and
34
35 (3) Holds assets for the court and not for the plaintiff or the defendant.
36

37 **(b) Prohibited contracts, agreements, arrangements, and understandings**

38
39 The party seeking the appointment of the receiver may not, directly or indirectly,
40 require any contract, agreement, arrangement, or understanding with any receiver
41 whom it intends to nominate or recommend to the court, and the receiver may not
42 enter into any such contract, arrangement, agreement, or understanding concerning:
43

- (1) The role of the receiver with respect to the property following a trustee's sale or termination of a receivership, without specific court permission;
- (2) How the receiver will administer the receivership or how much the receiver will charge for services or pay for services to appropriate or approved third parties hired to provide services;
- (3) Who the receiver will hire, or seek approval to hire, to perform necessary services; or
- (4) What capital expenditures will be made on the property.

Rule ~~3.1180.1904.~~ Employment of attorney

A receiver must not employ an attorney without the approval of the court. The application for approval to employ an attorney must be in writing and must state:

- (1) The necessity for the employment;
- (2) The name of the attorney whom the receiver proposes to employ; and
- (3) That the attorney is not the attorney for, associated with, nor employed by an attorney for any party.

Rule ~~3.1181.1905.~~ Receiver's inventory

(a) Filing of inventory

A receiver must, within 30 days after appointment, or within such other time as the court may order, file an inventory containing a complete and detailed list of all property of which the receiver has taken possession by virtue of the appointment.

(b) Supplemental inventory

The receiver must promptly file a supplementary inventory of all subsequently obtained property.

Rule ~~3.1182.1906.~~ Monthly reports

(a) Content of reports

The receiver must provide monthly reports to the parties and, if requested, to nonparty client lien holders. These reports must include:

- (1) A narrative report of events;
- (2) A financial report; and
- (3) A statement of all fees paid to the receiver, employees, and professionals showing:
 - (i) Itemized services;
 - (ii) A breakdown of the services by 1/10 hour increments;
 - (iii) If the fees are hourly, the hourly fees; and
 - (iv) If the fees are on another basis, that basis.

(b) Reports not to be filed

The monthly reports are not to be filed with the court unless the court so orders.

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(ii) A breakdown of the services by 1/10 hour increments;

(iii) If the fees are hourly, the hourly fees; and

(iv) If the fees are on another basis, that basis.

(b) Reports not to be filed

The monthly reports are not to be filed with the court unless the court so orders.

Rule ~~3.1183.1907~~ 3.1184.1907. Interim fees and objections

(a) Interim fees

Interim fees are subject to final review and approval by the court. The court retains jurisdiction to award a greater or lesser amount as the full, fair, and final value of the services received.

(b) Objections to interim accounts and reports

Unless good cause is shown, objections to a receiver's interim report and accounting must be made within 10 days of notice of the report and accounting, must be specific, and must be delivered to the receiver and all parties entitled to service of the interim report and accounting.

Rule ~~3.1184.1908~~ 3.1184.1908. Receiver's final account and report

(a) Motion or stipulation

A receiver must present by noticed motion or stipulation of all parties:

(1) A final account and report;

(2) A request for the discharge; and

(3) A request for exoneration of the receiver's surety.

1 **(b) No memorandum required**

2
3 No memorandum needs to be submitted in support of the motion or stipulation
4 served and filed under (a) unless the court so orders.
5

6 **(c) Notice**

7
8 Notice of the motion or of the stipulation must be given to every person or entity
9 known to the receiver to have a substantial, unsatisfied claim that will be affected
10 by the order or stipulation, whether or not the person or entity is a party to the
11 action or has appeared in it.
12

13 **(d) Claim for compensation for receiver or attorney**

14
15 If any allowance of compensation for the receiver or for an attorney employed by
16 the receiver is claimed in an account, it must state in detail what services have been
17 performed by the receiver or the attorney, and whether previous allowances have
18 been made to the receiver or attorney and the amounts.
19

20 **Chapter 4. Ex Parte Applications**

21
22 **(Reviser's note: Rule 379 would be repealed and its provisions placed in the eight**
23 **separate rules (rules 3.1200–3.1207) contained in this chapter. The Civil and Small**
24 **Claims Advisory Committee plans to review these reformatted rules and to consider**
25 **further amendments.)**
26

27 **~~Rule 379. Ex parte applications and orders~~**

28
29 **~~(a) [Ex parte application]~~**

30
31 ~~An ex parte application for an order must be accompanied by an affidavit or a~~
32 ~~declaration showing:~~
33

- 34 ~~(1) that, within the applicable time period under (b), the applicant informed the~~
35 ~~opposing party when and where the application would be made; or~~
36
37 ~~(2) that the applicant in good faith attempted to inform the opposing party but was~~
38 ~~unable to do so, specifying the efforts made to inform the opposing party; or~~
39
40 ~~(3) that, for reasons specified, the applicant should not be required to inform the~~
41 ~~opposing party.~~
42

1 **(b) ~~[Time of notice; time of notice in unlawful detainer proceedings]~~**

2
3 ~~A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the~~
4 ~~court day before the ex parte appearance, absent a showing of exceptional~~
5 ~~circumstances that justify a shorter time for notice. A party seeking an ex parte~~
6 ~~order in an unlawful detainer proceeding may provide shorter notice provided that~~
7 ~~the notice given is reasonable.~~
8

9 **(c) ~~[Filing and presentation of the ex parte application]~~**

10
11 ~~The clerk must not reject an ex parte application for filing and must promptly~~
12 ~~present the application to the appropriate judicial officer for consideration,~~
13 ~~notwithstanding the failure of an applicant to comply with the notification~~
14 ~~requirements in (b).~~
15

16 **(d) ~~[Contents of application]~~**

17
18 ~~(1) An ex parte application for an order must state the name, address, and~~
19 ~~telephone number of any attorney known to the applicant to be an attorney for~~
20 ~~any party or, if no such attorney is known, the name, address, and telephone~~
21 ~~number of such party if known to the applicant.~~
22

23 ~~(2) If an ex parte application for an order has been made to the court and has been~~
24 ~~refused in whole or in part, any subsequent application of the same character~~
25 ~~or for the same relief, although made upon an alleged different state of facts,~~
26 ~~must include a full disclosure of any previous applications and the court's~~
27 ~~actions.~~
28

29 **(e) ~~[Contents of notice and declaration regarding notice]~~**

30
31 ~~(1) When notice of an ex parte application is given, the person giving notice must~~
32 ~~state with specificity the nature of the relief to be requested and the date, time,~~
33 ~~and place for the presentation of the application, and must attempt to~~
34 ~~determine whether the opposing party will appear to oppose the application.~~
35

36 ~~(2) Every ex parte application must be accompanied by a declaration regarding~~
37 ~~notice that states:~~
38

39 ~~(A) the notice given, including the date, time, manner, and name of the party~~
40 ~~informed, the relief sought, any response, and whether opposition is~~
41 ~~expected; or~~
42

43 ~~(B) why notice should not be required.~~

1
2 (3) ~~If notice was provided later than 10:00 a.m. the court day before the ex parte~~
3 ~~appearance, the declaration regarding notice must explain:~~

4
5 (A) ~~the exceptional circumstances that justify the shorter notice, or~~

6
7 (B) ~~in unlawful detainer proceedings, why the notice given is reasonable.~~

8
9 **(f) ~~[Required documents]~~**

10
11 ~~An ex parte application must be in writing and include all of the following:~~

12
13 (1) ~~An application containing the case caption and stating the relief requested;~~

14
15 (2) ~~A declaration in support of the application making the factual showing~~
16 ~~required under (g);~~

17
18 (3) ~~A competent declaration based on personal knowledge of the notice given~~
19 ~~under (e);~~

20
21 (4) ~~A memorandum of points and authorities; and~~

22
23 (5) ~~A proposed order.~~

24
25 **(g) ~~[Affirmative factual showing required]~~**

26
27 ~~An applicant must make an affirmative factual showing in a declaration containing~~
28 ~~competent testimony based on personal knowledge of irreparable harm, immediate~~
29 ~~danger, or any other statutory basis for granting relief ex parte.~~

30
31 **(h) ~~[Service of papers]~~**

32
33 ~~Parties appearing at the ex parte hearing must serve the ex parte application or any~~
34 ~~written opposition on all other appearing parties at the first reasonable opportunity.~~
35 ~~Absent exceptional circumstances, no hearing may be conducted unless such~~
36 ~~service has been made.~~

37
38 **(i) ~~[Personal appearance requirements]~~**

39
40 ~~An ex parte application will be considered without a personal appearance of the~~
41 ~~applicant in the following cases only:~~

- (1) ~~Applications to file a memorandum of points and authorities in excess of the applicable page limit;~~
- (2) ~~Setting of hearing dates on alternative writs and orders to show cause; and~~
- (3) ~~Stipulations by the parties or other orders of the court.~~

Rule 3.1200. Application

The rules in this chapter govern ex parte applications and orders in civil cases, unless otherwise provided by a statute or a rule. These rules may be referred to as “the ex parte rules.”

Rule 3.1201. Required documents

A request for ex parte relief must be in writing and must include all of the following:

- (1) An application containing the case caption and stating the relief requested;
- (2) A declaration in support of the application making the factual showing required under rule 3.1202(c);
- (3) A declaration based on personal knowledge of the notice given under rule 3.1204;
- (4) A memorandum; and
- (5) A proposed order.

Rule 3.1202. Contents of application

(a) Identification of attorney or party

An ex parte application must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party if known to the applicant.

(b) Disclosure of previous applications

If an ex parte application has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, must include a full disclosure of all previous applications and of the court’s actions.

1
2 **(c) Affirmative factual showing required**

3
4 An applicant must make an affirmative factual showing in a declaration containing
5 competent testimony based on person knowledge of irreparable harm, immediate
6 danger, or any other statutory basis for granting relief ex parte.
7

8 **Rule 3.1203. Time of notice to other parties**

9
10 **(a) Time of notice**

11
12 A party seeing an ex parte order must notify all parties no later than 10:00 a.m. the
13 court day before the ex parte appearance, absent a showing of exceptional
14 circumstances that justify a shorter time for notice.
15

16 **(b) Time of notice in unlawful detainer proceedings**

17
18 A party seeking an ex parte order in an unlawful detainer proceeding may provide
19 shorter notice than required under (a) provided that the notice given is reasonable.
20

21 **Rule 3.1204. Contents of notice and declaration regarding notice**

22
23 **(a) Contents of notice**

24
25 When notice of an ex parte application is given, the person giving notice must:
26

- 27 (1) State with specificity the nature of the relief to be requested and the date, time,
28 and place for the presentation of the application, and
29
30 (2) Attempt to determine whether the opposing party will appear to oppose the
31 application.
32

33 **(b) Declaration regarding notice**

34
35 An ex parte application must be accompanied by a declaration regarding notice
36 stating:
37

- 38 (1) The notice given, including the date, time, manner, and name of the party
39 informed, the relief sought, any response, and whether opposition is expected
40 and that, within the applicable time under rule 3.1203 , the applicant informed
41 the opposing party where and when the application would be made; or
42

1 (2) That the applicant in good faith attempted to inform the opposing party but
2 was unable to do so, specifying the efforts made to inform the opposing party;
3 or

4
5 (3) That, for reasons specified, the applicant should not be required to inform the
6 opposing party.

7
8 **(c) Explanation for shorter notice**

9
10 If notice was provided later than 10:00 a.m. the court day before the ex parte
11 appearance, the declaration regarding notice must explain:

12
13 (1) The exceptional circumstances that justify the shorter notice; or

14
15 (2) In unlawful detainer proceedings, why the notice given is reasonable.

16
17 **Rule 3.1205. Filing and presentation of the ex parte application**

18
19 Notwithstanding the failure of an applicant to comply with the requirements of rule
20 3.1203, the clerk must not reject an ex parte application for filing and must promptly
21 present the application to the appropriate judicial officer for consideration.

22
23 **Rule 3.1206. Service of papers**

24
25 Parties appearing at the ex parte hearing must serve the ex parte application or any
26 written opposition on all other appearing parties at the first reasonable opportunity.
27 Absent exceptional circumstances, no hearing may be conducted unless such service has
28 been made.

29
30 **Rule 3.1207. Personal appearance requirements**

31
32 An ex parte application will be considered without a personal appearance of the applicant
33 in the following cases only:

34
35 (1) Applications to file a memorandum in excess of the applicable page limit;

36
37 (2) Setting of hearing dates on alternative writs and orders to show cause; and

38
39 (3) Stipulations by the parties for an order.

40
41 **Chapter 5. Noticed Motions**

1 **Rule ~~3.1300.317~~ 3.1300.317. Time for filing and service of motion papers**

2
3 **(a) In general**

4
5 Unless otherwise ordered or specifically provided by law, all moving and
6 supporting papers ~~shall~~ must be served and filed in accordance with Code of Civil
7 Procedure section 1005.
8

9 **(b) Order shortening time**

10
11 The court, on its own motion or on application for an order shortening time
12 supported by a declaration showing good cause, may prescribe shorter times for the
13 filing and service of papers than the times specified in Code of Civil Procedure
14 section 1005.
15

16 **(c) Time for filing proof of service**

17
18 Proof of service of the moving papers ~~shall~~ must be filed no later than five ~~calendar~~
19 court days before the time appointed for the hearing.
20

21 **(d) Filing of late papers**

22
23 No paper ~~shall~~ may be rejected for filing on the ground that it was untimely
24 submitted for filing. If the court, in its discretion, refuses to consider a late filed
25 paper, the minutes or order ~~shall~~ must so indicate.
26

27 **(e) Computation of time**

28
29 A paper submitted before the close of the clerk's office to the public on the day the
30 paper is due is deemed timely filed.
31

32 **(Reviser's note: Because of the enactment of AB 3078, subdivision (c) should be**
33 **amended to be consistent with Code of Civil Procedure section 1005 so that the time**
34 **for filing the proof of service will continue to be the same as the time for filing the**
35 **reply papers, i.e., 5 court days.)**
36

37 **Rule ~~3.1302.319~~ 3.1302.319. Place and manner of filing**

38
39 **(a) Papers filed in clerk's office**

40
41 Unless otherwise provided by local rule, all papers relating to a law and motion
42 proceeding ~~shall~~ must be filed in the clerk's office.
43

1 **(b) Requirements for lodged material**

2
3 Material lodged with the clerk ~~shall~~ must be accompanied by an addressed envelope
4 with sufficient postage for mailing the material. After determination of the matter,
5 ~~the material may be mailed by the clerk~~ may mail the material to the party lodging
6 it.

7
8 **Rule ~~3.1304.321~~. Time of hearing**

9
10 **(a) General schedule**

11
12 The clerk must post a general schedule showing the days and departments for
13 holding each type of law and motion hearing.

14
15 **(b) Duty to notify if matter not to be heard**

16
17 The moving party must immediately notify the court if a matter will not be heard on
18 the scheduled date.

19
20 **(c) Notice of nonappearance**

21
22 A party may give notice that he or she will not appear at a law and motion hearing
23 and submit the matter without an appearance unless the court orders otherwise. The
24 court must rule on the motion as if the party had appeared.

25
26 **(d) Action if no party appears**

27
28 If a party fails to appear at a law and motion hearing without having given notice
29 under (c), the court may take the matter off calendar, to be reset only upon motion,
30 or may rule on the matter.

31
32 **Rule ~~3.1306.323~~. Evidence at hearing**

33
34 **(a) Restrictions on oral testimony**

35
36 Evidence received at a law and motion hearing must be by declaration, ~~affidavit~~, or
37 request for judicial notice without testimony or cross-examination, ~~except as~~
38 ~~allowed in the court's discretion~~ unless the court orders otherwise for good cause
39 shown.

40
41 **(b) Request to present oral testimony**

1 A party seeking permission to introduce oral evidence, except for oral evidence in
2 rebuttal to oral evidence presented by the other party, must file, no later than three
3 court days before the hearing, a written statement stating the nature and extent of
4 the evidence proposed to be introduced and a reasonable time estimate for the
5 hearing. When the statement is filed less than five court days before the hearing, the
6 filing party must serve a copy on the other parties in a manner to assure delivery to
7 the other parties no later than two days before the hearing.
8

9 **(c) Judicial notice**

10
11 A party requesting judicial notice of material under Evidence Code sections 452 or
12 453 must provide the court and each party with a copy of the material. If the
13 material is part of a file in the court in which the matter is being heard, the party
14 must:

- 15
16 (1) Specify in writing the part of the court file sought to be judicially noticed; and
17
18 (2) Make arrangements with the clerk to have the file in the courtroom at the time
19 of the hearing.
20

21 **Rule ~~3.1308.324~~. Tentative rulings**

22
23 **(a) Tentative ruling procedures**

24
25 A trial court that offers a tentative ruling procedure in civil law and motion matters
26 ~~shall~~ must follow one of the following procedures:
27

- 28 (1) *Notice of intent to appear required*

29
30 The court ~~shall~~ must make its tentative ruling available by telephone and also,
31 at the option of the court, by any other method designated by the court, by no
32 later than 3:00 p.m. the court day before the scheduled hearing. If the court
33 desires oral argument, the tentative ruling ~~shall~~ must so direct. The tentative
34 ruling may also note any issues on which the court wishes the parties to
35 provide further argument. If the court has not directed argument, oral
36 argument ~~shall~~ must be permitted only if a party notifies all other parties and
37 the court by 4:00 p.m. on the court day ~~prior to~~ before the hearing of the
38 party's intention to appear. A party ~~shall~~ must notify all other parties by
39 telephone or in person. The court ~~shall~~ must accept notice by telephone and, at
40 its discretion, may also designate alternative methods by which a party may
41 notify the court of the party's intention to appear. The tentative ruling ~~shall~~
42 will become the ruling of the court if the court has not directed oral argument
43 by its tentative ruling and notice of intent to appear has not been given.

1
2 (2) *No notice of intent to appear required*
3

4 The court ~~shall~~ must make its tentative ruling available by telephone and also,
5 at the option of the court, by any other method designated by the court, by a
6 specified time ~~prior to~~ before the hearing. The tentative ruling may note any
7 issues on which the court wishes the parties to provide further argument at the
8 hearing. This procedure ~~shall~~ must not require the parties to give notice of
9 intent to appear, and the tentative ruling ~~shall~~ will not automatically become
10 the ruling of the court if such notice is not given. The tentative ruling, or such
11 other ruling as the court may render, ~~shall~~ will not become the final ruling of
12 the court until the hearing.
13

14 (b) **No other procedures permitted**
15

16 Other than following one of the tentative ruling procedures authorized in
17 ~~subdivision~~ (a), courts ~~shall~~ must not issue tentative rulings except:
18

19 (1) By posting a calendar note containing tentative rulings on the day of the
20 hearing; or
21

22 (2) By announcing the tentative ruling at the time of oral argument.
23

24 (c) **Notice of procedure**
25

26 A court that follows one of the procedures described in ~~subdivision~~ (a) ~~shall~~ must so
27 state in its local rules. The local rule ~~shall~~ must specify the telephone number for
28 obtaining the tentative rulings and the time by which the rulings will be available.
29

30 (d) **Uniform procedure within court or branch**
31

32 If a court or a branch of a court adopts a tentative ruling procedure, that procedure
33 ~~shall~~ must be used by all judges in the court or branch who issue tentative rulings.
34

35 (e) **Tentative rulings not required**
36

37 This rule does not require any judge to issue tentative rulings.
38

39 **Rule 3.1310.324.5. Reporting of proceedings on motions**
40

41 A court that does not regularly provide for reporting or electronic recording of hearings
42 on motions ~~shall~~ must so state in its local rules. The rules ~~shall~~ must also provide a

1 procedure by which a party may obtain a reporter or a recording of the proceedings in
2 order to provide an official verbatim transcript.

3
4 **Rule ~~3.1312.391~~. Preparation of order**

5
6 **(a) Prevailing party to prepare**

7
8 Unless the parties waive notice or the court orders otherwise, the party prevailing on
9 any motion ~~shall~~ must, within five days of the ruling, mail or deliver a proposed
10 order to the other party for approval as conforming to the court's order. Within five
11 days after the mailing or delivery, the other party ~~shall~~ must notify the prevailing
12 party as to whether or not the proposed order is so approved. The opposing party
13 ~~shall~~ must state any reasons for disapproval. Failure to notify the prevailing party
14 within the time required shall be deemed an approval. Code of Civil Procedure
15 section 1013, relating to service of papers by mail, does not apply to this rule.
16

17 **(b) Submission of proposed order to court**

18
19 The prevailing party ~~shall~~ must, upon expiration of the five-day period provided for
20 approval, promptly transmit the proposed order to the court together with a
21 summary of any responses of the other parties or a statement that no responses were
22 received.
23

24 **(c) Failure of prevailing party to prepare form**

25
26 If the prevailing party fails to prepare and submit a proposed order as required by
27 (a) and (b) above, any other party may do so.
28

29 **(d) Motion unopposed**

30
31 This rule ~~shall~~ does not apply if the motion was unopposed and a proposed order
32 was submitted with the moving papers, unless otherwise ordered by the court.
33

34 **Chapter 6. Particular Motions**

35
36 **Article 1. Pleading and Venue Motions**

37
38 **Rule ~~3.1320.325~~. Demurrers**

39
40 **(a) Grounds separately stated**
41

Each ground of demurrer ~~shall~~ must be in a separate paragraph and ~~shall~~ must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses.

(b) Demurrer not directed to all causes of action

A demurrer to a cause of action may be filed without answering other causes of action.

(Reviser's note: Subdivision (b) is based on the first sentence of current (g).)

(b) (c) Notice of hearing

A party filing a demurrer ~~shall~~ must serve and file therewith a notice of hearing ~~which shall~~ that must specify a hearing date in accordance with the provisions of Code of Civil Procedure section 1005.

(d) Date of hearing

Demurrers ~~shall~~ must be set for hearing not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter. For good cause shown, the court may order the hearing held on an earlier or later day on notice prescribed by the court.

(e) (e) Caption

A demurrer ~~shall~~ must state, on the first page immediately below the number of the case, the name of the party filing the demurrer and the name of the party whose pleading is the subject of the demurrer.

(d) (f) Failure to appear at hearing

When a demurrer is regularly called for hearing and ~~there is no appearance by one party~~ one of the parties does not appear, the demurrer ~~shall~~ must be disposed of on the merits at the request of the party appearing unless for good cause the hearing is continued. Failure to appear in support of a special demurrer may be construed by the court as an admission that the demurrer is not meritorious and as a waiver of all grounds thereof. If neither party appears, the demurrer may be disposed of upon its merits or dropped from the calendar, to be restored upon notice or upon terms as the court may deem proper, or the hearing may be continued to a such time as the court ~~shall~~ orders.

1 **(e) (g) Leave to answer or amend**

2
3 Following a ruling on a demurrer, unless otherwise ordered, leave to answer or
4 amend within 10 days ~~shall be~~ is deemed granted, except for actions in forcible
5 entry, forcible detainer, or unlawful detainer in which case five calendar days ~~shall~~
6 be is deemed granted.

7
8 **(f) (h) Dismissal Ex parte application to dismiss following failure to amend**

9
10 A motion to dismiss the entire action and for entry of judgment after expiration of
11 the time to amend following the sustaining of a demurrer may be made by ex parte
12 application to the court under ~~section 581(f)(2) of the Code of Civil Procedure~~
13 section 581(f)(2).

14
15 **(i) Motion to strike late-filed amended pleading**

16
17 If an amended pleading is filed after the time allowed, ~~then~~ an order striking the
18 amended pleading must be obtained by noticed motion ~~pursuant to~~ under ~~section~~
19 ~~1010 of the Code of Civil Procedure~~ section 1010.

20
21 **~~(g) (i) Demurrer not directed to all causes of action~~ Time for motion to strike,**
22 **demur, or otherwise plead after demurrer**

23
24 ~~A demurrer to a cause of action may be filed without answering other causes of~~
25 ~~action.~~ Unless otherwise ordered, defendant ~~shall have~~ has 10 days to move to
26 strike, demur, or otherwise plead to the complaint or the remaining causes of action
27 following:

- 28
29 (1) The overruling of the demurrer; _;
30
31 (2) The amendment of the complaint or the expiration of the time to amend if the
32 demurrer was sustained with leave to amend; _; or
33
34 (3) The sustaining of the demurrer if the demurrer was sustained without leave to
35 amend.

36
37 **Rule ~~3.1322.329.~~ 3.1322.329. Motions to strike**

38
39 **(a) Contents of notice**

40
41 A notice of motion to strike a portion of a pleading ~~shall~~ must quote in full the
42 portions sought to be stricken except where the motion is to strike an entire

1 paragraph, cause of action, count, or defense. Specifications in a notice ~~shall~~ must
2 be numbered consecutively.

3
4 **(b) Timing**

5
6 A notice of motion to strike ~~shall~~ must be given within the time allowed to plead,
7 and if a demurrer is interposed, concurrently therewith, and ~~shall~~ must be noticed
8 for hearing and heard at the same time as the demurrer.
9

10 **Rule 3.1324.327. Amended pleadings and amendments to pleadings**

11
12 **(a) Contents of motion**

13
14 A motion to amend a pleading before trial must:

- 15
16 (1) Include a copy of the proposed amendment or amended pleading, which must
17 be serially numbered to differentiate it from previous pleadings or
18 amendments;
19
20 (2) State what allegations in the previous pleading are proposed to be deleted, if
21 any, and where, by page, paragraph, and line number, the deleted allegations
22 are located; and
23
24 (3) State what allegations are proposed to be added to the previous pleading, if
25 any, and where, by page, paragraph, and line number, the additional
26 allegations are located.
27

28 **(b) Supporting declaration**

29
30 A separate declaration must accompany the motion and must specify:

- 31
32 (1) The effect of the amendment;
33
34 (2) Why the amendment is necessary and proper;
35
36 (3) When the facts giving rise to the amended allegations were discovered; and
37
38 (4) The reasons why the request for amendment was not made earlier.
39

40 **(c) Form of amendment**

1 The court may deem a motion to file an amendment to a pleading to be a motion to
2 file an amended pleading and require the filing of the entire previous pleading with
3 the approved amendments incorporated into it.

4
5 **(d) Requirements for amendment to a pleading**

6
7 An amendment to a pleading must not be made by alterations on the face of a
8 pleading except by permission of the court. All alterations must be initialed by the
9 court or the clerk.

10
11 **Rule 3.1326.326. Motions for change of venue**

12
13 Following denial of a motion to transfer under ~~section 396b~~ of the Code of Civil
14 Procedure section 396b, unless otherwise ordered, 30 calendar days ~~shall be~~ are deemed
15 granted defendant to move to strike, demur, or otherwise plead if the defendant has not
16 previously filed a response. If a motion to transfer is granted, 30 calendar days ~~shall be~~
17 are deemed granted from the date the receiving court mails notice of receipt of the case
18 and its new case number.

19
20 **Article 2. Procedural Motions**

21
22 **Rule 3.1330.371. Motion concerning arbitration**

23
24 A petition to compel arbitration or to stay proceedings pursuant to Code of Civil
25 Procedure sections 1281.2 and 1281.4 ~~shall set forth~~ must state, in addition to other
26 required allegations, the provisions of the written agreement and the paragraph that
27 provides for arbitration. The provisions ~~shall~~ must be ~~set forth~~ stated verbatim or a copy
28 ~~shall~~ must be attached to the petition and incorporated by reference.

29
30 **Rule 3.1332.375. Motion or application for continuance of trial**

31
32 **(a) Trial dates are firm**

33
34 To ensure the prompt disposition of civil cases, the dates assigned for a trial are
35 firm. All parties and their counsel must regard the date set for trial as certain.

36
37 **(b) Motion or application**

38
39 A party seeking a continuance of the date set for trial, whether contested or
40 uncontested or stipulated to by the parties, must make the request for a continuance
41 by a noticed motion or an ex parte application under ~~rule 379~~ the rules in chapter 4
42 of this division , with supporting declarations. The party must make the motion or

1 application as soon as reasonably practical once the necessity for the continuance is
2 discovered.

3
4 **(c) Grounds for continuance**
5

6 Although continuances of trials are disfavored, each request for a continuance must
7 be considered on its own merits. The court may grant a continuance only upon an
8 affirmative showing of good cause requiring the continuance. Circumstances that
9 may indicate good cause include:

- 10
11 (1) The unavailability of an essential lay or expert witness because of death,
12 illness, or other excusable circumstances;
13
14 (2) The unavailability of a party because of death, illness, or other excusable
15 circumstances;
16
17 (3) The unavailability of trial counsel because of death, illness, or other excusable
18 circumstances;
19
20 (4) The substitution of trial counsel, but only where there is an affirmative
21 showing that the substitution is required in the interests of justice;
22
23 (5) The addition of a new party if:
24
25 (A) The new party has not had a reasonable opportunity to conduct discovery
26 and prepare for trial, or
27
28 (B) The other parties have not had a reasonable opportunity to conduct
29 discovery and prepare for trial in regard to the new party's involvement
30 in the case;
31
32 (6) A party's excused inability to obtain essential testimony, documents, or other
33 material evidence despite diligent efforts; or
34
35 (7) A significant, unanticipated change in the status of the case as a result of
36 which the case is not ready for trial.
37

38 **(d) Other factors to be considered**
39

40 In ruling on a motion or application for continuance, the court must consider all the
41 facts and circumstances that are relevant to the determination. These may include:

- 42
43 (1) The proximity of the trial date;

- (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;
- (3) The length of the continuance requested;
- (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;
- (5) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;
- (7) The court's calendar and the impact of granting a continuance on other pending trials;
- (8) Whether trial counsel is engaged in another trial;
- (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- (11) Any other fact or circumstance relevant to the fair determination of the motion or application.

Rule ~~3.1335.375.1~~ 3.1335.375.1. Motion or application to advance, specially set, or reset trial date

(a) Noticed motion or application required

A party seeking to advance, specially set, or reset a case for trial must make this request by noticed motion or ex parte application under ~~rule 379~~ the rules in chapter 4 of this division .

(b) Grounds for motion or application

The request may be granted only upon an affirmative showing by the moving party of good cause based on a declaration served and filed with the motion or application.

Article 3. Motions to Dismiss

Rule ~~3.1340.372.~~ Motion for discretionary dismissal after two years for delay in prosecution

(a) Discretionary dismissal two years after filing

The court on its own motion or on motion of the defendant may dismiss an action under Code of Civil Procedure sections article 4 (§583.410–583.430 et seq.) of chapter 1.5 of title 8 of part 2 of the Code of Civil Procedure for delay in prosecution if the action has not been brought to trial or conditionally settled within two years after the action was commenced against the defendant.

(b) Notice of court’s intention to dismiss

If the court intends to dismiss an action on its own motion, the clerk ~~shall~~ must set a hearing on the dismissal and mail notice to all parties at least 20 days before the hearing date.

(c) Definition of “conditionally settled”

“Conditionally settled” means:

(i) (1) A settlement agreement conditions dismissal on the satisfactory completion of specified terms that are not to be fully performed within two years after the filing of the case; and

(ii) (2) Notice of the settlement is filed with the court as provided in rule ~~225~~ 3.1385 .

~~(b) Purpose of rule~~

~~This rule is adopted under sections 583.410(b) and 583.420(a)(2)(B) of the Code of Civil Procedure to reduce unnecessary delay in the resolution of litigation and to improve the administration of justice.~~

(Reviser’s note: Current subdivision (b) would be deleted as unnecessary.)

Rule 3.1342.373. Motion to dismiss for delay in prosecution

(a) Notice of motion

1 A party seeking dismissal of a case pursuant to under article 4 (§583.410 et seq.) of
2 ~~chapter 1.5 of title 8 of part 2 of the Code of Civil Procedure sections 583.410–~~
3 583.430 shall must serve and file a notice of motion at least 45 days before the date
4 set for hearing of the motion, and The party may, with the memorandum of points
5 and authorities, serve and file ~~an affidavit or a~~ declaration stating facts in support of
6 the motion. The filing of the notice of motion ~~shall~~ must not preclude the opposing
7 party from further prosecution of the case to bring it to trial.
8

9 **(b) Written opposition**

10
11 Within 15 days after service of the notice of motion, the opposing party may serve
12 and file a written opposition, ~~a memorandum of points and authorities, and a~~
13 ~~supporting affidavit or declaration stating facts showing why the motion should be~~
14 ~~denied.~~ The failure of the opposing party to serve and file a written opposition may
15 be construed by the court as an admission that the motion is meritorious, and the
16 court may grant the motion without a hearing on the merits.
17

18 **(c) Response to opposition**

19
20 Within 15 days after service of the written opposition, if any, the moving party may
21 serve and file a response, ~~a supplemental memorandum of points and authorities,~~
22 ~~and an affidavit or declaration stating facts in support of the motion.~~
23

24 **(d) Reply**

25
26 Within five days after service of the response, if any, the opposing party may serve
27 and file a reply.
28

29 **(e) Relevant matters**

30
31 In ruling on the motion the court ~~shall~~ must consider all matters relevant to a proper
32 determination of the motion, including:
33

34 (1) The court's file in the case and the ~~affidavits and~~ declarations and supporting
35 data submitted by the parties and, where applicable, the availability of the
36 moving party and other essential parties for service of process;
37

38 (2) The diligence in seeking to effect service of process;
39

40 (3) The extent to which the parties engaged in any settlement negotiations or
41 discussions;
42

- 1 (4) The diligence of the parties in pursuing discovery or other pretrial
2 proceedings, including any extraordinary relief sought by either party;
3
4 (5) The nature and complexity of the case;
5
6 (6) The law applicable to the case, including the pendency of other litigation
7 under a common set of facts or determinative of the legal or factual issues in
8 the case;
9
10 (7) The nature of any extensions of time or other delay attributable to either party;
11
12 (8) The condition of the court's calendar and the availability of an earlier trial
13 date if the matter was ready for trial;
14
15 (9) Whether the interests of justice are best served by dismissal or trial of the
16 case; and
17
18 (10) Any other fact or circumstance relevant to a fair determination of the issue.

19
20 The court ~~shall~~ must be guided by the policies set forth in ~~section 583.130 of the~~
21 Code of Civil Procedure section 583.130.

22
23 (f) **Court action**
24

25 The court may grant or deny the motion or, where the facts warrant, the court may
26 continue or defer its ruling on the matter pending performance by either party of
27 any conditions relating to trial or dismissal of the case that may be required by the
28 court to effectuate substantial justice.
29

30 ~~**Rule 820. Motion to dismiss**~~
31

32 ~~The procedure for seeking dismissal of a case pursuant to article 4 (§583.410 et seq.) of~~
33 ~~chapter 1.5 of title 8 of part 2 of the Code of Civil Procedure shall be in accord with rule~~
34 ~~373.~~
35

36 **(Reviser's note: This rule, which simply provides a cross-reference and appears to**
37 **be redundant, should be repealed.)**
38

39 **Article 4. Summary Judgment Motions**
40

41 ~~**Rule 3.1350.342. Motion for summary judgment or summary adjudication**~~
42

1 **(a) Motion**

2
3 As used in this rule, “motion” refers to either a motion for summary judgment or a
4 motion for summary adjudication.
5

6 **(b) Motion for summary adjudication**

7
8 If made in the alternative, a motion for summary adjudication may make reference
9 to and depend upon the same evidence submitted in support of the summary
10 judgment motion. If summary adjudication is sought, whether separately or as an
11 alternative to the motion for summary judgment, the specific cause of action,
12 affirmative defense, claims for damages, or issues of duty must be stated
13 specifically in the notice of motion and be repeated, verbatim, in the separate
14 statement of undisputed material facts.
15

16 **(c) Documents in support of motion**

17
18 The motion must contain and be supported by the following documents:
19

- 20 (1) Notice of motion by *[moving party]* for summary judgment or summary
21 adjudication or both;
22
23 (2) Separate statement of undisputed material facts in support of *[moving party’s]*
24 motion for summary judgment or summary adjudication or both;
25
26 (3) Memorandum of ~~points and authorities~~ in support of *[moving party’s]* motion
27 for summary judgment or summary adjudication or both;
28
29 (4) Evidence in support of *[moving party’s]* motion for summary judgment or
30 summary adjudication or both; and
31
32 (5) Request for judicial notice in support of *[moving party’s]* motion for summary
33 judgment or summary adjudication or both (if appropriate).
34

35 **(d) Separate statement in support of motion**

36
37 The Separate Statement of Undisputed Material Facts in support of a motion must
38 separately identify each cause of action, claim, issue of duty, or affirmative defense,
39 and each supporting material fact claimed to be without dispute with respect to the
40 cause of action, claim, issue of duty, or affirmative defense. In a two-column
41 format, the statement must state in numerical sequence the undisputed material facts
42 in the first column and the evidence that establishes those undisputed facts in the

1 second column. Citation to the evidence in support of each material fact must
2 include reference to the exhibit, title, page, and line numbers.

3
4 **(e) Documents in opposition to motion**

5
6 The opposition to a motion must consist of the following documents, separately
7 stapled and titled as shown:

- 8
9 (1) *[Opposing party's]* memorandum of ~~points and authorities~~ in opposition to
10 *[moving party's]* motion for summary judgment or summary adjudication or
11 both;
12
13 (2) *[Opposing party's]* separate statement of undisputed material facts in
14 opposition to *[moving party's]* motion for summary judgment or summary
15 adjudication or both;
16
17 (3) *[Opposing party's]* evidence in opposition to *[moving party's]* motion for
18 summary judgment or summary adjudication or both (if appropriate); and
19
20 (4) *[Opposing party's]* request for judicial notice in opposition to *[moving*
21 *party's]* motion for summary judgment or summary adjudication or both (if
22 appropriate).
23

24 **(f) Opposition to motion; content of separate statement**

25
26 Each material fact claimed by the moving party to be undisputed must be set out
27 verbatim on the left side of the page, below which must be set out the evidence said
28 by the moving party to establish that fact, complete with the moving party's
29 references to exhibits. On the right side of the page, directly opposite the recitation
30 of the moving party's statement of material facts and supporting evidence, the
31 response must unequivocally state whether that fact is "disputed" or "undisputed."
32 An opposing party who contends that a fact is disputed must state, on the right side
33 of the page directly opposite the fact in dispute, the nature of the dispute and
34 describe the evidence that supports the position that the fact is controverted. That
35 evidence must be supported by citation to exhibit, title, page, and line numbers in
36 the evidence submitted.
37

38 **(g) Documentary evidence**

39
40 If evidence in support of or in opposition to a motion exceeds 25 pages, the
41 evidence must be ~~in a~~ separately bound volume and must include a table of
42 contents.
43

1 **(h) Format for separate statements**

2
3 Supporting and opposing separate statements in a motion for summary judgment
4 must follow this format:

5
6 Supporting statement:

7
8 Undisputed Material Facts:

Supporting Evidence:

9
10 1. Plaintiff and defendant entered into
11 a written contract for the sale of
12 widgets.

Jackson declaration, 2:17–21;
contract, Ex. A to Jackson
declaration.

13
14
15 2. No widgets were ever received.

Jackson declaration, 3:7–21.

16
17 Opposing statement:

18
19 Undisputed Material Facts and
20 Alleged Supporting Evidence:

Response and Evidence:

21
22 1. Plaintiff and defendant entered into a
23 written contract for the sale of widgets.
24 Jackson declaration, 2:17–21; contract,
25 Ex. A to Jackson declaration.

Undisputed.

26
27 2. No widgets were ever received.
28 Jackson declaration, 3:7–21.

Disputed. The widgets were received
in New Zealand on August 31, 2001.
Baygi declaration, 7:2–5.

29
30
31 Supporting and opposing separate statements in a motion for summary adjudication
32 must follow this format:

33
34 Supporting statement:

35
36 **ISSUE 1—THE FIRST CAUSE OF ACTION FOR**
37 **NEGLIGENCE IS BARRED BECAUSE PLAINTIFF**
38 **EXPRESSLY ASSUMED THE RISK OF INJURY**

39
40 Undisputed Material Facts:

Supporting Evidence:

1 1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3–4.

2
3
4
5 2. Before leaving on the mountain-climbing trip, plaintiff signed a complete waiver of liability. Smith declaration, 5:4–5; waiver of liability, Ex. A to Smith declaration.

6
7
8
9 Opposing statement:

10
11 ISSUE 1—THE FIRST CAUSE OF ACTION FOR
12 NEGLIGENCE IS BARRED BECAUSE PLAINTIFF
13 EXPRESSLY ASSUMED THE RISK OF INJURY
14

15 Undisputed Material Facts and Alleged
16 Supporting Evidence:

Response and Evidence:

17
18 1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3–4. Undisputed.

19
20
21
22 2. Before leaving on the mountain-climbing trip, plaintiff signed a complete waiver of liability. Smith declaration, 5:4–5; waiver of liability, Ex. A to Smith declaration. Disputed. Plaintiff did not sign the waiver of liability; the signature on the waiver is forged. Jones declaration, 3:6–7.

23
24
25
26
27
28 (i) **Request for electronic version of separate statement**

29
30 Upon request, a party must within 3 days provide to any other party or the court an electronic version of its separate statement. The electronic version may be provided in any form upon which the parties agree. If the parties are unable to agree on the form, the responding party must provide to the requesting party the electronic version of the separate statement ~~which~~ that it used to prepare the document filed with the court. Under this ~~provision~~ subdivision, a party is not required to create an electronic version or any new version of any document for the purpose of transmission to the requesting party.

31
32
33
34
35
36
37
38
39 **Rule 3.1352.343. Objections to evidence**

40
41 A party desiring to make objections to evidence in the papers on a motion for summary judgment must either:
42
43

1 (1) Submit objections in writing under rule ~~345~~ 3.1354 ; or

2
3 (2) Make arrangements for a court reporter to be present at the hearing.

4
5 **Rule 3.1354~~345~~. Form of Written objections to evidence**

6
7 **(a) Form of written objections**

8
9 A written objection to evidence in support of or in opposition to a motion for
10 summary judgment must state:

11
12 (1) The page and line number of the document to which objection is made; and

13
14 (2) State the grounds of objection with the same specificity as a motion to strike
15 evidence made at trial.

16
17 **(b) Time for filing and service of objections**

18
19 Written objections must be filed and served no later than 4:30 p.m. on the third
20 court day ~~preceeding~~ before the hearing.

21
22 **Article 5. Miscellaneous Motions**

23
24 **Rule 3.1360~~369~~. Motion to grant lien on cause of action**

25
26 A motion that a lien be granted on a cause of action, right to relief, or judgment ~~shall~~
27 must be accompanied by an authenticated record of the judgment upon which the
28 judgment creditor relies and an affidavit or declaration as to the identity of the party
29 involved and the amount due.

30
31 **Rule 3.1362~~376~~. Motion to be relieved as counsel**

32
33 **(a) Notice**

34
35 A notice of motion and motion to be relieved as counsel under Code of Civil
36 Procedure section 284(2) ~~shall~~ must be directed to the client and ~~shall~~ must be made
37 on the *Notice of Motion and Motion to Be Relieved as Counsel—Civil* (form (MC-
38 051)).

39
40 **(b) Memorandum of points and authorities**

41
42 Notwithstanding any other rule of court, no memorandum ~~of points and authorities~~
43 is required to be filed or served with a motion to be relieved as counsel.

1
2 **(c) Declaration**
3

4 The motion to be relieved as counsel ~~shall~~ must be accompanied by a declaration on
5 the *Declaration in Support of Attorney's Motion to Be Relieved as Counsel—Civil*
6 (form (MC-052). The declaration ~~shall~~ must state in general terms and without
7 compromising the confidentiality of the attorney-client relationship why a motion
8 under Code of Civil Procedure section 284(2) is brought instead of filing a consent
9 under Code of Civil Procedure section 284(1).
10

11 **(d) Service**
12

13 The notice of motion and motion and the declaration ~~shall~~ must be served on the
14 client and on all other parties who have appeared in the case. The notice may be by
15 personal service or mail. If the notice is served on the client by mail under Code of
16 Civil Procedure section 1013, it ~~shall~~ must be accompanied by a declaration stating
17 facts showing that either:
18

- 19 (1) The service address is the current residence or business address of the client;
20 or
21
22 (2) The service address is the last known residence or business address of the
23 client and the attorney has been unable to locate a more current address after
24 making reasonable efforts to do so within 30 days ~~prior to~~ before the filing of
25 the motion to be relieved.
26

27 As used in this rule, “current” means that the address was confirmed within 30 days
28 ~~prior to~~ before the filing of the motion to be relieved. Merely demonstrating that the
29 notice was sent to the client’s last known address and was not returned ~~will~~ is not,
30 by itself, ~~be~~ sufficient to demonstrate that the address is current. If the service is by
31 mail, Code of Civil Procedure section 1011(b) ~~shall apply~~ applies.
32

33 **(e) Order**
34

35 The proposed order relieving counsel ~~shall~~ must be prepared on the *Order Granting*
36 *Attorney's Motion to Be Relieved as Counsel—Civil* (form (MC-053) and ~~shall~~ must
37 be lodged with the court and served on the client with the moving papers. The order
38 ~~shall~~ must specify all hearing dates scheduled in the action or proceeding, including
39 the date of trial, if known. If no hearing date is presently scheduled, the court may
40 set one and specify the date in the order. After the order is signed, a copy of the
41 signed order ~~shall~~ must be served on the client and on all parties that have appeared
42 in the case. The court may delay the effective date of the order relieving counsel

1 until proof of service of a copy of the signed order on the client has been filed with
2 the court.

3
4 **Division 12. Settlement**

5
6 **Rule ~~3.1380.222~~. Mandatory settlement conferences**

7
8 **(a) Settlement conference**

9
10 On the court's own motion or at the request of any party, the court may set a
11 mandatory settlement conference.

12
13 **(b) Persons attending**

14
15 Trial counsel, parties, and persons with full authority to settle the case must
16 personally attend the conference, unless excused by the court for good cause. If any
17 consent to settle is required for any reason, the party with that consensual authority
18 must be personally present at the conference.

19
20 **(c) Settlement conference statement**

21
22 No later than five court days before the date set for the settlement conference, each
23 party must submit to the court and serve on each party a mandatory settlement
24 conference statement containing:

25
26 (1) A good faith settlement demand; and

27
28 (2) An itemization of economic and non-economic damages by each plaintiff; and

29
30 (3) A good faith offer of settlement by each defendant; and

31
32 (4) The A statement must set forth identifying and discussing in detail all facts
33 and law pertinent to the issues of liability and damages involved in the case as
34 to that party.

35
36 ~~and~~ The settlement conference statement must and comply with any additional
37 requirement imposed by local rule.

38
39 **Rule ~~3.1382.330~~. Good faith settlement and dismissal**

40
41 A motion or application for determination of good faith settlement may include a request
42 to dismiss a pleading or a portion of a pleading. The notice of motion or application for
43 determination of good faith settlement ~~shall~~ must list each party and pleading or portion

1 of pleading affected by the settlement and the date on which the affected pleading was
2 filed.

3
4 **Rule ~~3.1384.378~~. Petition for approval of the compromise of a claim of a minor or**
5 **incompetent person; order for deposit of funds; and petition for withdrawal**

6
7 **(a) Petition for approval of the compromise of a claim**
8

9 A petition for court approval of a compromise or covenant not to sue under Code of
10 Civil Procedure section 372 must comply with rules 7.950, 7.951, and 7.952.

11
12 **(b) Order for the deposit of funds and petition for withdrawal**
13

14 An order for the deposit of funds of a minor or an incompetent person and a petition
15 for the withdrawal of such funds must comply with rules 7.953 and 7.954.
16

17 **Rule ~~3.1385.225~~. Duty to notify court and others of settlement of entire case**
18

19 **(a) Notice of settlement**
20

21 **(1) Court and other persons to be notified**
22

23 If an entire case is settled or otherwise disposed of, each plaintiff or other
24 party seeking affirmative relief must immediately file written notice of the
25 settlement or other disposition with the court and serve the notice on all
26 parties and any arbitrator or other court-connected alternative dispute
27 resolution (ADR) neutral involved in the case. Each plaintiff or other party
28 seeking affirmative relief must also immediately give oral notice to all of the
29 above if a hearing, conference, or trial is scheduled to take place within 10
30 days.
31

32 **(2) Compensation for failure to provide notice**
33

34 If the plaintiff or other party seeking affirmative relief does not notify an
35 arbitrator or other court-connected ADR neutral involved in the case of a
36 settlement at least 2 days before the scheduled hearing or session with that
37 arbitrator or neutral, the court may order the party to compensate the arbitrator
38 or other neutral for the scheduled hearing time. The amount of compensation
39 ordered by the court must not exceed the maximum amount of compensation
40 the arbitrator would be entitled to receive for service as an arbitrator under
41 Code of Civil Procedure section 1141.18(b) or that the neutral would have
42 been entitled to receive for service as a neutral at the scheduled hearing or
43 session.

1
2 **(b) Dismissal of case**
3

4 Except as provided in (c), each plaintiff or other party seeking affirmative relief
5 must serve and file a request for dismissal of the entire case within 45 days after the
6 date of settlement of the case. If the plaintiff or other party required to serve and file
7 the request for dismissal does not do so, the court must dismiss the entire case 45
8 days after it receives notice of settlement unless good cause is shown why the case
9 should not be dismissed.
10

11 **(c) Conditional settlement**
12

13 If the settlement agreement conditions dismissal on the satisfactory completion of
14 specified terms that are not to be performed within 45 days of the settlement, the
15 notice of conditional settlement served and filed by each plaintiff or other party
16 seeking affirmative relief must specify the date by which the dismissal is to be filed.
17 If the plaintiff or other party required to serve and file a request for dismissal within
18 45 days after the dismissal date specified in the notice does not do so, the court must
19 dismiss the entire case unless good cause is shown why the case should not be
20 dismissed.
21

22 **Division 13. Dismissal of Actions**
23

24 **Rule 3.1390.383. Service and filing of notice of entry of dismissal**
25

26 A party ~~who~~ that requests dismissal of an action ~~shall~~ must serve on all parties and file
27 notice of entry of the dismissal.
28

29 **Division 14. Pretrial [Reserved]**
30

31 **Division 15. Trial**
32

33 **Chapter 1. General Provisions [Reserved]**
34

35 **Chapter 2. Consolidation or Bifurcation of Cases for Trial [Reserved]**
36

37 **Chapter 3. Nonjury trials [Reserved]**
38

39 **Chapter 4. Jury trials**
40

41 **Rule 3.1540.228. Examination of prospective jurors in civil cases**
42

1 **(a) Application**

2
3 This rule applies to all civil jury trials.
4

5 **(b) Examination of jurors by the trial judge**

6
7 To select a fair and impartial jury, the trial judge ~~shall~~ must examine the prospective
8 jurors orally, or by written questionnaire, or by both methods. In examining
9 prospective jurors in civil cases, the judge should consider the policies and
10 recommendations in Standard 3.25 of the Standards of Judicial Administration .The
11 judge may use the ~~Juror Questionnaire for Civil Cases~~ *Juror Questionnaire for Civil*
12 ~~Cases~~ (Judicial Council form MC-001) may be used.
13

14 **(c) Additional questions and examination by counsel**

15
16 Upon completion of the initial examination, the trial judge ~~shall~~ must permit
17 counsel for each party who so requests to submit additional questions that the judge
18 shall put to the jurors. Upon request of counsel, the trial judge ~~shall~~ must permit
19 counsel to supplement the judge's examination by oral and direct questioning of any
20 of the prospective jurors. The scope of the additional questions or supplemental
21 examination ~~shall~~ must be within reasonable limits prescribed by the trial judge in
22 the judge's sound discretion.
23

24 **(d) Examination of juror outside the judge's presence**

25
26 The court may, upon stipulation by counsel for all parties appearing in the action,
27 permit counsel to examine the prospective jurors outside a judge's presence.
28

29 **Chapter 5. Testimony and Evidence [Reserved]**

30
31 **Chapter 6. Expert Witness Testimony [Reserved]**

32
33 **Chapter 7. Jury Instructions**

34
35 **Rule 3.1560. Application**

36
37 The rules on jury instructions in chapter 4 of division 8 of title 2 apply to civil cases.
38

39 **Chapter 8. Special Verdicts**

40
41 **Rule 3.1580.230. Request for special findings by jury**

1 Whenever a party desires special findings by a jury, ~~he shall~~ the party must, before
2 argument, unless otherwise ordered, present to the judge in writing the issues or questions
3 of fact upon which ~~such~~ the findings are requested, in proper form for submission to the
4 jury, and serve copies ~~thereof upon~~ on all other parties.

5 6 Chapter 9. Statement of Decision

7 8 **Rule ~~3.1590.232.~~ Announcement of tentative decision, statement of decision, and** 9 **judgment**

10 11 **(a) Announcement and service of tentative decision; ~~modification~~**

12
13 On the trial of a question of fact by the court, the court ~~shall~~ must announce its
14 tentative decision by an oral statement, entered in the minutes, or by a written
15 statement filed with the clerk. Unless the announcement is made in open court in
16 the presence of all parties who appeared at the trial, the clerk ~~shall forthwith~~ must
17 immediately mail to all parties who appeared at the trial a copy of the minute entry
18 or written tentative decision.

19 20 **(b) Tentative decision not binding**

21
22 The tentative decision ~~shall~~ does not constitute a judgment and ~~shall is~~ is not be
23 binding on the court. If the court subsequently modifies or changes its announced
24 tentative decision, the clerk ~~shall~~ must mail a copy of the modification or change to
25 all parties who appeared at the trial.

26 27 **(c) Provisions in tentative decision**

28
29 The court in its tentative decision may (1) state whether a statement of decision, if
30 requested, will be prepared by the court or by a designated party, and (2) direct that
31 the tentative decision ~~shall~~ will be the statement of decision unless within ~~ten~~ 10
32 days either party specifies controverted issues or makes proposals not covered in the
33 tentative decision.

34 35 **~~(b)~~ (d) Proposals following request for statement of decision (Code Civ. Proc.,** 36 **§ 632)**

37
38 Any proposals as to the content of the statement of decision ~~shall~~ must be made
39 within 10 days of the date of request for a statement of decision.

40 41 **~~(e)~~ (e) Preparation and service of proposed statement of decision and judgment**

1 If a statement of decision is requested, the court ~~shall~~ must, within 15 days after the
2 expiration of the time for proposals as to the content of the statement of decision,
3 prepare and mail a proposed statement of decision and a proposed judgment to all
4 parties ~~who~~ that appeared at the trial, unless the court has designated a party to
5 prepare the statement as provided by subdivision ~~(a)~~(c) or has, within 5 days after
6 the request, notified a party to prepare the statement. A party who has been
7 designated or notified to prepare the statement ~~shall~~ must within 15 days after the
8 expiration of the time for filing proposals as to the content of the statement, or
9 within 15 days after notice, whichever is later, prepare, serve, and submit to the
10 court a proposed statement of decision and a proposed judgment. If the proposed
11 statement of decision and judgment are not served and submitted within that time,
12 any other party who appeared at the trial may: (1) prepare, serve, and submit to the
13 court a proposed statement of decision and judgment, or (2) serve on all other
14 parties and file a notice of motion for an order that a statement of decision be
15 deemed waived.

16
17 **(d) (f) Objections to proposed statement of decision**

18
19 Any party affected by the judgment may, within 15 days after the proposed
20 statement of decision and judgment have been served, serve and file objections to
21 the proposed statement of decision or judgment.
22

23 **(e) (g) Preparation and filing of written judgment when statement of decision**
24 **not requested**

25
26 If a statement of decision is not requested or has been waived and a written
27 judgment is required, the court ~~shall~~ must prepare and mail a proposed judgment to
28 all parties who appeared at the trial within 10 days after expiration of the time for
29 requesting a statement of decision or time of waiver. The court may notify a party to
30 prepare, serve, and submit the proposed judgment to the court within 10 days. Any
31 party affected by the judgment may, within 10 days after service of the proposed
32 judgment, serve and file objections thereto.
33

34 **(h) Signature and filing of judgment**

35
36 The court ~~shall~~ must, within 10 days after expiration of the time for filing objections
37 to the proposed judgment or, if a hearing is held, within 10 days after the hearing,
38 sign and file its judgment. The judgment so filed ~~shall~~ constitutes the decision upon
39 which judgment ~~shall is to be entered pursuant to under section 664 of the Code of~~
40 Civil Procedure section 644.
41

42 **(f) (i) Hearing**

1 The court may order a hearing on proposals or objections to a proposed statement of
2 decision or the proposed judgment if a statement of decision is not required.

3
4 **(g) (i) Extension of time; relief from noncompliance**

5
6 The court may, by written order, extend any of the times prescribed by this rule and
7 at any time prior to the entry of judgment may, for good cause shown and on such
8 terms as may be just, excuse a noncompliance with the time limits prescribed for
9 doing any act required by this rule.

10
11 **(h) (k) Not applicable to trial within one day**

12
13 This rule does not apply if the trial was completed within one day.

14
15 **(i) Relettered subd (g)**

16
17 **Rule ~~3.1591.232.5~~ 3.1591.232.5. Statement of decision, judgment, and motion for new trial**
18 **following bifurcated trial**

19
20 **(a) Separate trial of an issue**

21
22 When a factual issue raised by the pleadings is tried by the court separately and
23 ~~prior to~~ before the trial of other issues, the judge conducting the separate trial ~~shall~~ must
24 must announce the tentative decision on the issue so tried and ~~shall~~ must, when
25 requested ~~pursuant to~~ under Code of Civil Procedure section 632, issue a statement
26 of decision as prescribed in rule ~~232~~ 3.1590; but ~~no~~ the court must not prepare any
27 proposed judgment ~~shall be prepared~~ until the other issues are tried, except when an
28 interlocutory judgment or a separate judgment may otherwise be properly entered at
29 that time.

30
31 **(b) Trial of issues by a different judge**

32
33 If the other issues are tried by a different judge or judges, each judge ~~shall~~ must
34 perform all acts required by rule ~~232~~ 3.1590 as to the issues tried by that judge and
35 the judge trying the final issue ~~shall~~ must prepare the proposed judgment.

36
37 **(c) Trial of subsequent issues before issuance of statement of decision**

38
39 A judge may proceed with the trial of subsequent issues before the issuance of a
40 statement of decision on previously tried issues. Any motion for a new trial
41 following a bifurcated trial ~~shall~~ must be made after all the issues are tried and, if
42 the issues were tried by different judges, each judge ~~shall~~ must hear and determine
43 the motion as to the issues tried by that judge.

1
2 **Division 16. Post-trial**
3

4 **Rule ~~3.1600.236.5~~. Notice of intention to move for new trial—~~time for service and~~**
5 **~~filing of memorandum~~**
6

7 **(a) Time for service of memorandum**
8

9 Within 10 days after filing notice of intention to move for a new trial in a civil case,
10 the moving party must serve and file a memorandum in support of the motion, and
11 within 10 days thereafter any adverse party may serve and file a memorandum in
12 reply.
13

14 **(b) Effect of failure to serve memorandum**
15

16 If the moving party fails to serve and file ~~the prescribed~~ a memorandum within the
17 time prescribed in (a), the court may deny the motion for a new trial without a
18 hearing on the merits.
19

20 **Rule ~~3.1602.236~~. Hearing of motion to vacate judgment**
21

22 A motion to vacate judgment under ~~section 663 of the~~ Code of Civil Procedure section
23 663 ~~shall must~~ be heard and determined by the judge who presided at the trial; provided,
24 however, that in case of the inability or death of such judge or if at the time noticed for
25 the hearing thereon he is absent from the county where the trial was had, the motion may
26 be heard and determined by another judge of the same court.
27

28 **Division 17. Attorney's Fees and Costs**
29

30 **Rule ~~3.1700.870~~. Prejudgment costs**
31

32 **(a) Claiming costs**
33

34 ***(1) Trial costs***
35

36 A prevailing party who claims costs ~~shall must~~ serve and file a memorandum
37 of costs within 15 days after the date of mailing of the notice of entry of
38 judgment or dismissal by the clerk under Code of Civil Procedure section
39 664.5 or the date of service of written notice of entry of judgment or dismissal,
40 or within 180 days after entry of judgment, whichever is first. The
41 memorandum of costs ~~shall must~~ be verified by a statement of the party,
42 attorney, or agent that to the best of his or her knowledge the items of cost are
43 correct and were necessarily incurred in the case.

1
2 (2) *Costs on default*
3

4 A party seeking a default judgment who claims costs ~~shall~~ must request costs
5 on the Request for Entry of Default (form 982(a)(6)) at the time of applying
6 for the judgment.
7

8 (b) **Contesting costs**
9

10 (1) *Striking and taxing costs*
11

12 Any notice of motion to strike or to tax costs ~~shall~~ must be served and filed 15
13 days after service of the cost memorandum. If the cost memorandum was
14 served by mail, the period is extended as provided in Code of Civil Procedure
15 section 1013.
16

17 (2) *Form of motion*
18

19 Unless objection is made to the entire cost memorandum, the motion to strike
20 or tax costs ~~shall~~ must refer to each item objected to by the same number and
21 appear in the same order as the corresponding cost item claimed on the
22 memorandum of costs and ~~shall~~ must state why the item is objectionable.
23

24 (3) *Extensions of time*
25

26 The party claiming costs and the party contesting costs may agree to extend
27 the time for serving and filing the cost memorandum and a motion to strike or
28 tax costs. This agreement ~~shall~~ must be confirmed in writing, specify the
29 extended date for service, and be filed with the clerk. In the absence of an
30 agreement, the court may extend the times for serving and filing the cost
31 memorandum or the notice of motion to strike or tax costs for a period not to
32 exceed 30 days.
33

34 (4) *Entry of costs*
35

36 After the time has passed for a motion to strike or tax costs or for
37 determination of that motion, the clerk ~~shall~~ must immediately enter the costs
38 on the judgment ~~forthwith~~.
39

40 **Rule 3.1702.870.2. Claiming attorney's fees**
41

42 (a) **Applicability**
43

1 Except as otherwise provided by statute, this rule applies in civil cases to claims for
2 statutory attorney's fees and claims for attorney's fees provided for in a contract.
3 Subdivisions (b) and (c) apply when the court determines entitlement to the fees, the
4 amount of the fees, or both, whether the court makes that determination because the
5 statute or contract refers to "reasonable" fees, because it requires a determination of
6 the prevailing party, or for other reasons.

7
8 **(b) Attorney's fees before trial court judgment**

9
10 (1) Time for motion

11
12 A notice of motion to claim attorney's fees for services up to and including the
13 rendition of judgment in the trial court—including attorney's fees on an
14 appeal before the rendition of judgment in the trial court—~~shall~~ must be
15 served and filed within the time for filing a notice of appeal under rules ~~2~~
16 8.104 and ~~3~~ 8.108.

17
18 (2) Stipulation for extension of time

19
20 The parties may, by stipulation filed before the expiration of the time allowed
21 under ~~subdivision~~ (b)(1), extend the time for filing a motion for attorney's
22 fees:

23
24 (i) (A) Until 60 days after the expiration of the time for filing a notice of
25 appeal; or

26
27 (ii) (B) If a notice of appeal is filed, until the time within which a
28 memorandum of costs must be served and filed under rule ~~27(d)~~
29 8.276(d).

30
31 **(c) Attorney's fees on appeal**

32
33 (1) Time for motion

34
35 A notice of motion to claim attorney's fees on appeal—other than the
36 attorney's fees on appeal claimed under ~~subdivision~~ (b)—under a statute or
37 contract requiring the court to determine entitlement to the fees, the amount of
38 the fees, or both, ~~shall~~ must be served and filed within the time for serving and
39 filing the memorandum of costs under rule ~~27(d)~~ 8.276(d).

40
41 (2) Stipulation for extension of time

42
43 The parties may by stipulation filed before the expiration of the time allowed

under ~~subdivision~~ (c)(1) extend the time for filing the motion up to an additional 60 days.

(d) Extensions

For good cause, the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation.

(e) Attorney's fees fixed by formula

If a party is entitled to statutory or contractual attorney's fees that are fixed without the necessity of a court determination, the fees ~~shall~~ must be claimed in the memorandum of costs.

Division 18. Judgments

Rule ~~3.1800.388~~. Default judgments

(a) Documents to be submitted

A party seeking a default judgment on declarations must use mandatory Judicial Council form 982(a)(6). In an unlawful detainer case, a party may, in addition, use optional Judicial Council form UD-116 when seeking a court judgment based on declarations. The following must be included in the documents filed with the clerk:

- (1) Except in unlawful detainer cases, a brief summary of the case identifying the parties and the nature of plaintiff's claim;
- (2) Declarations or other admissible evidence in support of the judgment requested;
- (3) Interest computations as necessary;
- (4) A memorandum of costs and disbursements;
- (5) A declaration of nonmilitary status for each defendant against whom judgment is sought;
- (6) A proposed form of judgment;

(7) A dismissal of all parties against whom judgment is not sought or an application for separate judgment against specified parties under Code of Civil Procedure section 579, supported by a showing of grounds for each judgment;

(8) Exhibits as necessary; and

(9) A request for attorney fees if allowed by statute or by the agreement of the parties.

(b) Fee schedule

A court may by local rule establish a schedule of attorney's fees to be used by that court in determining the reasonable amount of attorney's fees to be allowed in the case of a default judgment.

Rule ~~3.1802.875~~. Inclusion of interest in judgment

The clerk ~~shall~~ must include in the judgment any interest awarded by the court and the interest accrued since the entry of the verdict.

Rule ~~3.1804.389~~. Periodic payment of judgments against public entities

(a) Notice of election or hearing

A public entity electing to pay a judgment against it by periodic payments under Government Code section 984 must serve and file a notice of election stipulating to the terms of such payments, or a notice of hearing on such terms, by the earlier of:

(1) 30 days after the clerk sends, or a party serves, notice of entry of judgment; or

(2) 60 days after entry of judgment.

(b) Time for hearing

Notwithstanding any contrary local rule ~~of~~ or practice, a hearing under (a) must be held within 30 days after service of the notice. The court must make an order for periodic payments at the hearing.

~~Advisory Committee Comment~~

~~New rule 389 is derived from subdivisions (a) and (b) of former rule 2.5. Subdivision (c) of former rule 2.5 has been moved to rule 2(b).~~

1 (Reviser's note: This historical comment would be repealed as obsolete.)
2

3 **Rule 3.1806.234. Notation on written instrument of rendition of judgment**
4

5 In all cases in which judgment is rendered upon a written obligation to pay money, the
6 clerk ~~shall~~ must, at the time of entry of judgment, unless otherwise ordered, note over ~~his~~
7 the clerk's official signature and across the face of the writing the fact of rendition of
8 judgment with the date ~~thereof~~ of the judgment and the title of the court and ~~cause~~ the
9 case.
10

11 **Division 19. Postjudgment and Enforcement of Judgments**
12

13 **Rule 3.1900.986. Notice of renewal of judgment**
14

15 A copy of the application for renewal of judgment ~~shall~~ must be attached to the notice of
16 renewal of judgment required by ~~section 683.160~~ of the Code of Civil Procedure section
17 683.160.
18

19 **Division 20. Unlawful Detainers**
20

21 **Rule 3.2000.870.4. Unlawful detainer—supplemental costs**
22

23 **(a) Time for filing supplemental cost memorandum**
24

25 In unlawful detainer proceedings, the plaintiff who has complied with ~~section~~
26 ~~4034.5~~ of the Code of Civil Procedure section 1034.5 may, no later than 10 days
27 after being advised by the sheriff or marshal of the exact amount necessarily used
28 and expended to effect the eviction, file a supplemental cost memorandum claiming
29 the additional costs and specifying the items paid and the amount.
30

31 **(b) Motion to tax costs**
32

33 The defendant may move to tax those costs within 10 days after service of the
34 supplemental cost memorandum.
35

36 **(c) Entry of judgment for costs and enforcement**
37

38 After costs have been fixed by the court, or upon failure of the defendant to file a
39 timely notice of motion to tax costs, the clerk ~~shall~~ must immediately enter
40 judgment for the costs. The judgment may be enforced in the same manner as a
41 money judgment.
42

1 **Division 21. Rules for Small Claims Actions**

2
3 **Chapter 1. Trial Rules**

4
5 **Rule ~~3.2100.1701~~. Compliance with fictitious business name laws**

6
7 **(a) Filing of declaration of compliance**

8
9 A claimant who is required to file a declaration of compliance with the fictitious
10 business name laws ~~pursuant to~~ under Code of Civil Procedure section 116.430
11 ~~shall~~ must file the declaration in each case filed.

12
13 **(b) Available methods**

14
15 The clerk ~~shall~~ must make the declaration of compliance available to the claimant in
16 any one of the following ways:

- 17
18 (1) The declaration of compliance may be placed on a separate form approved by
19 the Judicial Council;
20
21 (2) The approved Judicial Council form may be placed on the reverse of the
22 Plaintiff's Statement to the Clerk or on the back of any Judicial Council small
23 claims form with only one side; or
24
25 (3) The precise language of the declaration of compliance ~~which~~ that appears on
26 the approved Judicial Council form may be incorporated into the Plaintiff's
27 Statement to the Clerk.
28

29 **Rule ~~3.2102.1702~~. Substituted service**

30
31 If substituted service is authorized by Code of Civil Procedure section 116.340 or other
32 provisions of law, no due diligence is required in a small claims court action.
33

34 **Rule ~~3.2104.1703~~. Defendant's claim**

35
36 A defendant may file a claim against the plaintiff even if the claim does not relate to the
37 same subject or event as the plaintiff's claim, so long as the claim is within the
38 jurisdictional limit of the small claims court.
39

40 **Rule ~~3.2106.1704~~. Venue challenge**

41
42 A defendant may challenge venue by writing to the court. The defendant is not required
43 to personally appear at the hearing on the venue challenge. If the court denies the

1 challenge and the defendant is not present, the hearing ~~shall~~ must be continued to another
2 appropriate date. The parties ~~shall~~ must be given notice of the venue determination and
3 hearing date.

4
5 **Rule 3.2108.1705. Form of judgment**

6
7 The court ~~shall~~ may give judgment for damages, equitable relief, or both, and may make
8 other orders as the court deems just and equitable for the resolution of the dispute. If
9 specific property is referred to in the judgment, whether it be personal or real, tangible or
10 intangible, the property ~~shall~~ must be identified with sufficient detail to permit efficient
11 implementation or enforcement of the judgment.

12
13 **Rule 3.2110.1706. Role of clerk in assisting small claims litigants**

14
15 **(a) Provision of forms and pamphlets**

16
17 The clerk ~~shall~~ must provide forms and pamphlets from the Judicial Council.

18
19 **(b) Provision of Department of Consumer Affairs materials**

20
21 The clerk ~~shall~~ must provide materials from the Department of Consumer Affairs
22 when available.

23
24 **(c) Information about small claims advisory service**

25
26 The clerk ~~shall~~ must inform litigants of the small claims advisory service.

27
28 **(d) Answering questions**

29
30 The clerk may answer questions relative to filing and service of the claim,
31 designation of the parties, scheduling of hearings, and similar matters.

32
33 **Chapter 2. Small Claims Advisors**

34
35 **Rule 3.2120.1725. Advisor assistance**

36
37 **(a) Notice to parties**

38
39 The clerk ~~shall~~ must inform the parties, orally or in writing, about:

- 40
41 (1) ~~that an~~ The availability of advisors is available to assist small claims litigants
42 at no additional charge as provided in Code of Civil Procedure sections
43 116.260 and 116.940; and

1
2 (2) ~~of~~ The provisions of Government Code section 818.9.
3

4 **(b) Training**
5

6 All small claims advisors ~~shall~~ must receive training sufficient to ensure
7 competence in the areas of:
8

9 (1) Small claims court practice and procedure;
10

11 (2) Alternative dispute resolution programs;
12

13 (3) Consumer sales;
14

15 (4) Vehicular sales, leasing, and repairs;
16

17 (5) Credit and financing transactions;
18

19 (6) Professional and occupational licensing;
20

21 (7) Landlord-tenant law; and
22

23 (8) Contract, warranty, tort, and negotiable instruments law.
24

25 It is the intent of this rule that the county ~~shall~~ must provide this training.
26

27 **(c) Qualifications**
28

29 In addition to the training required in subdivision (b), each county may establish
30 additional qualifications for small claims advisors.
31

32 **(d) Conflict of interest**
33

34 A small claims advisor ~~shall~~ must disclose any known direct or indirect relationship
35 the advisor may have with any party or witness in the action. An advisor ~~shall~~ must
36 not disclose information obtained in the course of the advisor's duties or use the
37 information for financial or other advantage.
38

39 **(Reviser's note: Based on the operative date of the new rules on temporary judges,**
40 **rule 1726 will be obsolete after December 31, 2006; hence, the Judicial Council has**
41 **repealed it as of that time.)**
42

1 **Rule 1726. Temporary judges in small claims cases**

2
3 **(a) Qualifications**

4
5 To qualify for appointment as a temporary judge hearing matters in the small claims
6 court or on appeal of a small claims judgment, a person must have:

- 7
8 (1) Been a member of the State Floor for at least five years immediately
9 preceding appointment;
10
11 (2) Attended and completed a training program for temporary judges provided by
12 the appointing court; and
13
14 (3) Become familiar with the publications identified in Code of Civil Procedure
15 section 116.930.
16

17 **(b) Training program**

18
19 The training program must cover:

- 20
21 (1) Judicial ethics;
22
23 (2) Substantive law;*
24
25 (3) Small claims procedures (including the wording of judgments); and
26
27 (4) The conduct of small claims hearings.
28

29 Judicial ethics and the conduct of small claims hearings should be taught by a
30 judge, if possible; substantive law and procedure must be taught by any bench
31 officer or other person experienced in small claims law and procedure.
32

33 **(c) Substantive training**

34
35 An attorney who has received training under this rule within three years before July
36 1, 2006, that did not include training in all the substantive law topics specified in (b)
37 must supplement his or her training before that date to include the topics and
38 thereby be qualified to serve as a temporary judge hearing small claims cases.
39

40 **(d) Repeal**

41
42 This rule remains in effect through December 31, 2006, at which time it is repealed.

~~*Substantive areas of law are intended to include vehicular sales, leasing, and repairs; credit and financing transactions; professional and occupational licensing; state and federal consumer laws; landlord-tenant law along with any applicable county specific rent deposit law; the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Air Credit Billing Act, and the federal Electronic Fund Transfer Act; tort law; warranty law; negotiable instruments law; contract law, including defenses to contracts and defenses to debts; and other subject areas deemed appropriate by the presiding judge, given local needs and conditions.~~

Other rule repealed:

(Reviser's note: Current rule 991 in title 3 below would be repealed as obsolete in light of trial court unification.)

Rule 991. Trial court coordination implementation

~~(a) [Trial court coordination planning committees] By July 1, 1995, the trial courts within each county shall have created a trial court coordination planning committee with responsibility for planning court-coordinated activities. The coordination planning committee shall be responsible for preparing and submitting a single, county-wide coordination plan every two years, except as exempted by the Judicial Council, and for reporting on the progress of the implementation plan. By January 2, 1998, the trial court coordination planning committee shall have responsibility for governance of court-coordinated activities.~~

~~(b) [Judicial coordination] By July 1, 1996, the trial courts within each county shall coordinate judicial activities in order to maximize the efficient use of all judicial resources within the county and enhance service to the public. At a minimum, judicial coordination activities within a county shall include, but not be limited to, the following elements:~~

- ~~(1) creation of a process to ascertain expertise and interest of all judges and subordinate judicial officers in particular case or court assignments;~~
- ~~(2) the training of judges and subordinate judicial officers in accordance with expressed interest and needs of the court in order to facilitate new case or court assignments;~~
- ~~(3) development of uniform, county-wide case processing systems to enable maximum utilization of judicial officers; and~~
- ~~(4) factual use of all judges and subordinate judicial officers within a county in a manner that maximizes the utilization of judicial officers and is consistent~~

1 with judicial expertise, interest, and training, and recognizes the caseloads of
2 all courts within the county.
3

4 (e) ~~[Administrative structure]~~ By July 1, 1999, the trial courts within each county
5 shall have a single executive officer with county-wide administrative responsibility
6 who reports to a single presiding judge or oversight committee for all courts within
7 the county; except the Judicial Council, or its designee, may approve an alternative
8 administrative structure such as those specified in section 29(d)(2)(v)a, b, or c of the
9 California Standards of Judicial Administration when it has been demonstrated to
10 the Judicial Council that this structure has been successful in achieving the goal and
11 objectives of trial court coordination as set forth in section 29.
12

13 (d) ~~[County-wide information systems]~~ By September 1, 1996, the trial courts within
14 each county shall develop a common plan for county-wide implementation of
15 information and other technologies. By December 1, 1997, there shall be
16 measurable progress towards county-wide implementation, and by December 1,
17 1999, there shall be substantial operation of county-wide systems, subject to the
18 availability of funding.
19

20 (e) ~~[Uniform set of local rules]~~ By July 1, 1998, the trial courts within each county
21 shall adopt and implement a uniform set of local rules so that like proceedings can
22 be litigated using the same rules in any court in the county.
23

24 (f) ~~[County-wide integration of support services]~~ By July 1, 1996, the trial courts
25 within each county shall have adopted a coordination plan to provide for the
26 integration of all direct court support services for all courts within the county;
27 except as approved by the Judicial Council with respect to those services for which
28 integration would substantially increase costs or reduce public access or would be
29 contrary to existing agreements or memorandums of understanding. The plan shall
30 give specific reasons for excluding particular services from integration.
31

32 Implementation of the plan shall be verified no later than February 1, 1997,
33 according to a process determined by the Judicial Council. At a minimum, the
34 following services shall be included within the integration plan:
35

36 (1) personnel records;
37

38 (2) payroll;
39

40 (3) training;
41

42 (4) fiscal services;
43

- 1 (5) collections;
- 2
- 3 (6) budget services;
- 4
- 5 (7) facility maintenance in counties where the court performs this function;
- 6
- 7 (8) facility planning;
- 8
- 9 (9) information services;
- 10
- 11 (10) classification of employees;
- 12
- 13 (11) records management;
- 14
- 15 (12) procurement;
- 16
- 17 (13) interpreter services;
- 18
- 19 (14) jury summoning;
- 20
- 21 (15) exhibits;
- 22
- 23 (16) court reporting;
- 24
- 25 (17) secretarial services;
- 26
- 27 (18) legal research; and
- 28
- 29 (19) security.